RETAIL TRADE ASSOCIATIONS

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RETAIL TRADE ASSOCIATIONS

A NEW FORM OF MONOPOLIST ORGANISATION IN BRITAIN

A Report to the Fabian Society

by
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FOREWORD

EARLY in the war it became apparent that the trend towards monopoly in industry and trade, which had been the predominant economic development in the period between wars, was being strongly intensified. The conditions of war themselves immensely foster this tendency, and these external conditions have been actively reinforced by Government action. To anyone looking ahead at the beginning of the war, indeed, it was clear that here was probably *the* fundamental economic problem of the 1940's. If this trend continued, how could the public interest be protected against the growing power of the monopolies?

When Professor Hermann Levy, whose work on industrial combination both in this country and in Europe needs no introduction, approached the Fabian Society and suggested an investigation of the developments of combination in the distributive trades, with special emphasis upon wartime development, we therefore eagerly welcomed the proposal. The facts which Professor Levy has discovered show with extreme clarity the way in which retail distribution—hitherto believed to be the last stronghold of free competition—is moving. They show with even greater clarity the urgent need for a public policy to cope with this trend, and to guide it into channels in which the maximum efficiency will be maintained without danger of exploitation of the consumer. The Fabian Society sponsors this book in the hope that it will provide the factual basis indispensable for the formulation of a sound and progressive policy, though neither the Society nor its members are responsible for the opinions expressed.

The Society is indebted to Mr. R. W. B. Clarke for help and advice in the preparation of the manuscript for publication.

JOHN PARKER,
General Secretary,
Fabian Society.

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LONDON, S.W.1

AUTHOR'S PREFACE

WHEN in 1909 the first edition of my investigation into British cartels and trusts was published, the mere existence of so many quasi-monopolist organisations in the industries of this country came as a surprise to many of its readers. In the meantime one has become accustomed to regard industrial combination as the regular organisational feature of British industry. In those days it was never assumed that anything like industrial combination could become the characteristic structure of retail trade as well. Just as it was supposed formerly that " free trade " would make industrial combination impossible in this country, so nowadays the argument is frequently heard that the great multiplicity of trading outlets will never allow quasi-monopolist retail trade organisations to flourish for any length of time. Yet cartels in this country developed in spite of free trade, and retail trade associations with the unconcealed aim of restricting competition are to be found in every corner of trade activity in spite of the large numbers of single traders. But, again, similarly to industrial combinations in former days, retail trade associations have been fortunate to remain in the background of publicity. No such word as " combination " has yet been introduced to characterise their objects. The term " association "—unlike the terms " cartel ", " syndicate " or " trust "—is applied to sporting, charitable and political organisations, and does not itself indicate that a new form of restricted competition is rapidly developing, and that this new development is changing the entire structure of British retail trade. To the description and analysis of these changes the present book has been devoted. It may claim to be the first in the field.

There have been many valuable contributions to partial aspects of the matter, in the form of books and treatises, and in particular a series of most instructive and illuminating articles in the *Manchester Guardian*, of some years ago, may be mentioned as having been of greatest service. My main sources of material, however, have been, as in my former studies on cartels and trusts, the various trade journals which week by week, or month by month, throw the most instructive light on all matters concerning retail trade problems. From the elaborate list of trade journals used,

which is appended to this book, the reader may gather the wide scope of inquiry which confronted the author in his task of drawing generalisations from a study of almost all important—and also from many less important or less conspicuous—branches of retail trade. It is regrettable that this valuable source of information is so little recognised by British economists. Yet it is clear that argumentation on theoretical lines is worthless unless it is fully backed by unassailable facts. These facts are drawn from the actual life and policy of retail trade associations. Without these facts, discussion might even be misleading and dangerous to the community. At the same time, the author has striven to avoid accepting what are merely the views and opinions of the so-called " practical men " in the trades. The problem transcends the sometimes very narrow, and necessarily opportunist, outlook of the so-called authorities of single trades. It touches, on the contrary, many aspects on which the State must in the last resort decide. The private outlook of trade representatives—experts as they may be—must be separated from the broader horizon of public interest and utility.

It is highly satisfactory that the President of the Board of Trade, after consultation with the Ministers of Labour and Food, appointed in June 1941 a Committee to examine the present problems of the retail trade in goods other than food. The present book was finished by the end of that month. In view of the coming findings of the new Committee the author may express the hope that his attempt to describe and analyse the main development and objectives of retail trade associations, past and present, may be of some value when the problem of the attitude of the State towards these trade corporations of to-morrow will demand a solution. How far the author, who is indebted to the Fabian Society for most helpful assistance, has been able to prepare the road for such final decisions it is for the readers of this book to judge.

HERMANN LEVY.

1942.

RETAIL TRADE ASSOCIATIONS

PART I

INTRODUCTORY

CHAPTER I

WHAT TRADE ASSOCIATIONS ARE

> What is notable among British consolidations and associations is not their rarity or weakness so much as their unobtrusiveness. There is not much display in the window, but there is a good selection inside.
>
> Report of Committee on Trusts, 1919.

THE purpose of this book on trade associations is to describe and dissect a very typical and important part of the economic structure. First of all, however, we must make precisely clear what we are describing. It is indicative of the lack of scientific and realistic economic analysis in this matter that there is no agreed and exact vocabulary for dealing with essentially different types of association and combination between economic units. The term " trade association " is used with considerable vagueness, and this vagueness of definition has played its part in sometimes enabling these organisations to conceal their real objects and activities. The term has been applied indiscriminately to three entirely different things, which in fact have very little in common.

The first type of " trade association " is the simple association of traders which merely aims at assisting its members in their business activities. The object is not to interfere with the business itself—sales programmes, prices, competition among members, and so on—but to promote general conditions favourable to the traders. A " code of business ethics " might be part of the association's activity. Such aims might find expression in the rules of an association in the general statement that the objects of the association are " to protect the interests of

its members ". The basic idea of this type of association is that the general interest of the members, needing collective representation, is covered by the activities of the association, while the individual member's decisions about his individual business activities remain untouched.

The borderline between this type of association and the second type—the association to exert a direct influence upon the member's business policy—is rather shadowy. Aims " to promote the knowledge of members in regard to their trade ", for example, might after some time be so extended and administered as to become a bar to " non-qualified " people in the trade ; they might change from merely propagandist and educational measures devoted to raising the general level of the association's standards, to a direct means of controlling the inflow of new competition. In general, as things now are, one may assume with E. T. Elbourne, in an address given to the Royal Statistical Society, that British trade associations were in the first instance " mostly identified with the control of selling prices " [1] or that " price control . . . tends to overshadow all other association activities ". This result is frequently achieved, however, by a gradual transformation of trade associations from their merely general co-operative functions (first type) to those of direct influence upon the business policies of members. The object and structure of the first type of trade association has nothing whatever in common with the second type, which seeks to limit competition between its members and in the trade outside the ranks of its membership.[2]

The typical example in Britain of the first type of trade association is the Retail Distributors' Association, widely known on account of the statistical and general information services which it performs for its members, relating to statistics, labour questions, legal and parliamentary questions, and, of late, war problems. This association deals with the department store trade exclusively, but its scope and aims may be well considered as characteristic of similar associations not concerned with any

[1] Cf. *Journal of the Royal Statistical Society*, 1927, pp. 637–40.

[2] In the U.S.A., where according to a survey by the Department of Commerce there were in 1938 no less than 8,200 trade associations, the functions of the trade association of the non-price-fixing type were described officially as " a voluntary organisation of business competitors, usually in one branch of the industrial, trade, or service fields, whose aim is to promote that branch through co-operative activities in two or more of the following phases: accounting practices, arbitration, business standards, commercial research, industrial research, public relations, statistics and trade promotion ". Cf. Kirsh and Shapiro, *Trade Associations in Law and Business*, New York, 1938, pp. 10 et seq.

policy of regulating competition by price-maintenance or otherwise.[1] The Report on Trusts of 1919 [2] failed to distinguish between the first and second types of association; it states that

> there is at the present time in every important branch of industry in the United Kingdom an increasing tendency to the formation of trade associations and combinations, having for their purpose the restriction of competition and the control of prices.

No distinction was made between the two types; they were lumped together and contrasted with Chambers of Commerce, which, as they do not regulate prices or production, "are not combinations in the sense in which the word is used here".

The second type of trade association, which has quasi-monopolist aims—i.e. seeks to limit competition to a tangible extent—is sometimes regarded as including industrial combination as well as combination among traders and distributors. The Report on Restraint of Trade [3] does not draw any distinction between those which merely represent regular monopolist industrial combines as cartels or syndicates, and those which are confined to trade only, either wholesale or retail. This unfortunate failure of vocabulary contributes greatly to the vagueness and indecision of the Report.[4] The Report on Trusts, likewise, before enumerating a list of cartels in different groups of industry remarks [5] that from such a list can be seen how great has been "the creation of trade (!) associations during the period of the war". None of the official investigations in this country, in fact, has realised that there is a very fundamental difference between industrial combinations, which are associations of *producers*, and trade associations, which are associations of *distributors*. It is high time that this difference should be recognised in discussion of the subject.

[1] Cf. for details, Nineteenth Annual Report, Retail Distributors' Association, April 1939, pp. 5 sqq.
[2] Cd. 9236.
[3] Report of the Committee appointed by the Lord Chancellor and the President of the Board of Trade to consider certain Trade Practices, 1931, p. 11.
[4] German terminology prevents such vagueness; most industrial combinations which are not trusts officially bear the name of *Syndikat* (*Kohlensyndikat*, *Kali* (potash) *Syndikat*, etc.); sometimes the name changes into *Vereinigung* or *Zentrale* or *Verband*, which comes nearest perhaps to association. But where combinations merely relate to selling they are called *Handelskartelle* (trade cartels), and this expression excludes any confusion with "harmless" associations of the first type, and likewise distinguishes production from distribution; nobody would dream of calling combination by producers in any industry HANDELS*verbaende*, which would be the exact translation of *trade* association. Cf. for details of nomenclature, Hermann Levy, *Industrial Germany*, 1935, pp. 198–200.
[5] Loc. cit., p. 2.

In this book we shall not be dealing with trade associations of the first type; nor shall we deal, except incidentally, with those industrial combinations which are erroneously described as "trade associations". What we mean by a "trade association" is an association of distributors—wholesale or retail—designed to restrict or regulate free competition. Big combines of manufacturers, transport undertakings, building firms, may have their "trade associations"—the function of sale and trade cannot logically be separated from the primary object of the concerns in question, which is to produce, and to make their profits from production; a sales department does not qualify the "trade" association of such manufacturers to be ranged among trade associations proper, except perhaps when the cartel or trust has directly entered and is dominating the organisation of wholesale, or even retail, trade on its own. But such circumstances are exceptional, especially in Britain, where the functions of producers and traders are still separate from one another. Cartels should not be confounded with trade associations proper, nor trade associations with the former.

The trade associations with which we are concerned, therefore, must be ranked definitely among organisations which aim at quasi-monopolist domination, such as pools, cartels, trusts, combines. They may be defined as associations of distributors formed with the object of regulating competition, either between their members, or between their members and traders outside the association. The latter point is of particular significance. It is of such importance that Professor D. H. Macgregor, in his most stimulating study of the matter, has laid almost outstanding emphasis on it.[1] It concerns the so-called trade practices which form an important element in the policy of trade associations, and with which we shall have to deal in much detail at a later stage. Such trade practices are certainly not confined to "trade" associations; we find them in the form of boycotting clauses and exclusive agreements in cartels and trusts as well, wherever, for instance, big mixed undertakings attempt to forestall competition by depriving "pure" works of the supply of raw materials or half-finished goods.[2] Yet they are certainly not as prominent in industrial combination as in trade associations. Cartels and trusts seek to dominate by virtue of their control of certain key points of production, such as the monopoly

[1] Cf. D. H. Macgregor, *Enterprise, Purpose and Profit*, Oxford, 1934, *passim*.
[2] Cf., for instance, Levy, *Industrial Germany*, pp. 145 sqq.; the same, *The New Industrial System*, 1935, pp. 238 sqq.

of raw material or the size of dominant undertakings; trade associations, on the other hand, have always resorted to "trade practices" binding all members and representing the monopolist element in the association. This is the means by which competition is restricted; it is the method by which price-fixing is maintained.

The kernel of trade associations' policy is to try to eliminate certain phases of competition by imposing upon their members certain regulations of trading, which, as Macgregor has rightly expressed it, are meant "to limit the access of producers to the consumers or of consumers to producers".[1] One may go a step further, and say that their function is to limit by trade practices the access of traders to producers and of consumers to traders. Such practices as stop lists, boycotting clauses, exclusive agreements, the attempt to become a closed corporation by the imposition of certain qualifications to the trade, local limitation of the number of competitors and regulation of the entry of newcomers to the trade—all these are trade practices, and in their organisational effect they far outweigh their original object: the maintenance of prices. In fact, as price fixing under modern conditions of quasi-monopolist industrial organisation is no longer a matter of independent decision by the single retailer, the main activities of trade associations are inevitably centred on the organisation of such practices. If a rail syndicate fixes the price of rails, only a handful of producers are concerned; the question of trade practices hardly enters their arrangements; the price is fixed, and markets may be allocated to the producers directly or through a selling syndicate. But in the retail trade there may be thousands of members in one trade. Prices cannot be fixed by a stroke of the pen, nor sales allocated on a quota principle. Thus arises the idea of combining "common" commercial interests by trade practices and general restrictions.

The large firms in the trade will play a leading part in such a movement. But the structure of retail trade, with its multiplicity of firms, never gives them the dominating position which the big firm attains in industry, especially in heavy industry. The road to successful limitation of competition is much more tortuous than in industry; the problems are in many ways more complex and opaque. But this does not make them any less interesting. It is characteristic in this respect that the

[1] Cf. Macgregor, loc. cit.; for a more general description, cf. also Percy Ford, *Economics of Modern Industry*, 1930, pp. 89 sqq.

Committee on Restraint of Trade, which one would have expected to be in the first instance a body to investigate the effect of such restraint on prices, was first of all occupied with the elucidation of the methods of associated trading regulations and not with their actual effect upon prices. As the minutes of appointment expressed it,

> to consider trade practices which result in withholding from particular retail traders supplies of goods in which they wish to deal or which prevent the resale of such supplies except upon conditions imposed by the suppliers.

It is evident to anybody who has been associated with the subject that, in contrast to the study of trustification, such methods of approaching quasi-monopolist aims are far more complicated than those of industrial combines. In fact, the organisation of trade associations in this respect may be regarded as constituting a much more highly developed stage of general combination. Perhaps this is why the trade association proper has never been fully investigated; it is in order to throw some light upon an obscure and beshadowed part of the economic structure that this book has been written.

CHAPTER 2

FIRST ATTEMPTS AT ASSOCIATION

Thou shalt not covet: but tradition approves all forms of competition.

ARTHUR HUGH CLOUGH (1819–61).
The Latest Decalogue.

THE rapid development of trade associations during the last forty years might easily suggest that this movement was merely a continuation of the development of cartels and trusts in British industry. We have already mentioned the fact that trade associations—though not those with which we are mainly concerned—might quite naturally emerge from the desire of industrial monopolies or dominant concerns to have their own sales organisation and that such sales organisations might again resort to trade practices similar to those of trade associations proper. Moreover, as we shall describe later in detail, the trade association movement might well be used by some industrial combines as a welcome and effective means to complete their monopolist domination. The Report on Restraint of Trade concluded its "general conclusions" with the ominous words: [1]

> If, at some time, the question of public policy in relation to this wider problem should be examined, the possibility of support being given by the price maintenance system and boycotts to monopolist combinations and trusts ought, we think, not to be overlooked.

There is certainly reason enough to see a strong connection between these developments. But nevertheless it would be wrong to assume that trade associations owe their existence merely to the strong development of industrial combination and the desire of industrial monopolists to close the gap by creating or assisting monopoly in the retail trade. Such an assumption would be wholly misleading. Trade associations were in existence, as this chapter will show, before the advent of the modern and recent movement of industrial combination, as represented by cartels and trusts. This assuredly means that there are conditions in certain trades which, quite apart from any mono-

[1] Cf. loc. cit., p. 34.

polist movement in the industry from which they derive their merchandise, tend to lead to associations of a restrictive character. It is in this sense that the history of trade associations is of such vital scientific importance.

The Report on Restraint of Trade expressed the opinion that "the oldest of the Associations in question" were founded in 1896,[1] so giving the impression that the development was entirely novel. If this were true, then there would be no need for the present chapter, and there would be much less ground for supposing that there were forces fostering trade associations independent of those creating industrial combination.

The search for early trade associations will not have to go back to the guild period. The guild was always a "trade association", the small, and later the bigger, craftsmen combining the function of producer and retailer. How far the eclipse of the original guild system, most marked in the sixteenth, seventeenth and eighteenth centuries by the gradual disappearance of the masters' financial independence in favour of the capitalist traders and out-putters, changed this structure, and how far under these new conditions there were trade associations of the latter, is at present uncertain, and is a matter for specialist economic historians to investigate.[2]

But our task in these preliminary chapters rests entirely with the period of capitalist competition after the end of the guild epoch. It is the revival of guild-like associations in trade which is important, and in this special chapter the problem arises whether, before the days of modern cartels and trusts, there were even sporadic attempts to prevent competition between trades by association. Before describing the two outstanding examples of trade associations which we have in mind, we may briefly mention the existence of a sales organisation in the London coal market which existed from about 1770 until the breakdown of the northern coal cartel, the so-called Newcastle Vend,[3] in 1840. The organisation was commonly called the "Coal Ring" and had the purpose of limiting competition between the wholesale dealers in the London coal market, so as to secure the maintenance of the prices aimed at by the mine owners' cartel in

[1] Loc. cit., p. 11.

[2] A most valuable recent source of information as regards guild-capitalism and the putting-out system is to be found in Alfred P. Wadsworth and Julia Lacy de Mann, *The Cotton Trade and Industrial Lancashire, 1600–1780*, London, 1931, cf. in particular p. 211 ss.

[3] Cf. for details, Hermann Levy, *Monopolies, Cartels and Trusts in British Industry*, 2nd ed., 1927, p. 106 ss., and in particular pp. 127–31, the Coal Ring, etc.

the North. The policy of this cartel was to entrust a group of " factors " in the London markets with the sale of coal. In paragraph 27 of the cartel's agreement the members bound themselves (the latest known agreement dates from 1835) " that all parties to this agreement shall strictly adhere to such regulations as to the sale of coals in London by the coal factors as the united committees shall from time to time agree upon ". The factors were actually what one would call to-day a trade association, although the whole organisation (like the later German *Kohlenkontor*, formed in 1903 by the Rhenish-Westphalian Coal Syndicate) was closely dependent upon the industrial cartel, and was therefore not a trade association proper in the sense defined here. But in regard to certain aspects of the modern collaboration between trade associations and industrial combines it is noteworthy that the Newcastle Vend and the London Coal Ring worked in close co-operation. The power of the ring kept down the middlemen's profits, and produced the steady prices which the cartel desired, at least on London's wholesale markets. The means of enforcing this were drastic, and remind us of the boycotting measures of to-day. If, for instance, it appeared that a captain or shipowner had not observed the rota decided by the ring, the secretary of the ring reported the fact to the secretary of the cartel in Northumberland and Durham. The cartel then boycotted the offending shipper, and this danger was usually quite sufficient to make shipowners and captains observe the ring's regulations.[1]

But there were many early trade associations which were not linked either directly or indirectly with producers' organisations, and which therefore may be considered as the pioneers of the present trade association proper. The most conspicuous example is that of the bookselling trade, which attracted the attention of the economists of the time. Babbage in 1833 called attention to the aim of this combination " to put down all competition ". It bore, from the beginning, a strong likeness to the German *Boersenverein der Deutschen Buchhændler*, which also was a genuine trade association.[2] Recent research work has done much to elucidate the history of this pioneer trade association; most of our present knowledge of it we owe to the invaluable work of Marjorie Plant, M.Sc., F.L.A., published as recently as 1939.[3] About 1660 eleven of the leading London printers

[1] Cf. Report on the Coal Trade, 1836, pp. 29, 34 and *passim*.
[2] Cf. C. Babbage, *Economy of Manufactures*, London, 1833, 3rd ed., p. 312.
[3] Cf. Marjorie Plant, *The English Book Trade*, 1939, p. 450.

combined in a Company of Printers. This body issued a pamphlet three years later entitled *A Brief Discourse concerning Printers and Printing*, setting forth certain grievances of the printers. The main complaint was with the Stationers' Company—a guild which had acquired its final status in 1560, and which may have been the natural descendant of the Guild of Writers of the Court Hand and Text Letters, first recorded in 1357.[1] The guild included everyone who took any part in the production and sale of books. Its main duty, however, was to be a detective agency intended to assist in uprooting heresy and sedition. The foundation of a company of printers in 1660 was due to the grievance that the Stationers' Company had become mainly a company of booksellers, bent on reducing the cost of printing, and to this end admitting far more printers than were really required. In other words: a conflict had sprung up between those engaged in printing the books and those engaged in publishing and selling them. In the background of the conflict there was, probably for the first time, the problem of competition among publishers and booksellers on the one hand, and printers on the other. The second half of the seventeenth century saw an enormous upward movement in the publication and sale of books; as political and religious problems were increasingly discussed in public, the book trade became linked with almost all aspects of politics at this beginning of the epoch of pamphlet publication.

The real problem of competition and regulated competition in the British book trade began, however, with the almost adventurous appearance of James Lackington in the book trade. This very remarkable figure has left us a full account of his commercial fight.[2] Here he describes how he first came to London and established himself as a second-hand bookseller. Not only did he sell second-hand books cheaply, but he also remaindered at half price in defiance of trade usage.[3]

> When first invited to . . . trade sales [he writes], I was very much surprised to learn that it was common for such as purchased remainders to destroy one-half or three-fourths of such books, and to charge the full publication price, or nearly that, for such as they kept on hand; and there was a kind of standing order amongst the trade, that in case anyone was known to sell articles under the

[1] Cf. Marjorie Plant, loc. cit., p. 124 ss.

[2] Cf. James Lackington, *Memoirs of the first forty-five years of life of James Lackington, the present bookseller in Chiswell Street, Moorfields, London, written by himself, in forty-seven letters to a Friend*, 1791.

[3] Cf. Plant, loc. cit., pp. 434–6.

publication price, such a person was to be excluded from trade sales; so blind were the copyright-holders to their own interest.

After having, for some time, cautiously complied with this custom, he ultimately "resolved not to destroy any books which were worth saving, but to sell them off at half or a quarter of the publication".[1] He had decided for himself in a quite arbitrary way what was a "remainder". He was not successful at once. Many of those who visited his shop were suspicious of the condition of the books. But by 1803 he could claim sales of more than a hundred thousand volumes a year.[2] Customers of all ranks flocked into his shop. He writes:

> I could almost be vain enough to assert, that I have been highly instrumental in diffusing that general desire for reading, now so prevalent among the inferior orders of society.

At the door of his shop was seen his motto:

> Small profits do great things.[3]

Lackington was, in fact, the first "price cutter". His system of selling surpluses at loss prices hardly differs from modern conditions of over-production and "dumping", and publishers would have been better advised to recognise Lackington's system instead of destroying valuable stocks of books. They had adopted a system which, in the corn trade, for instance, was branded in the same period as being the greatest possible crime that "engrossers" and "forestallers" could commit![4] But the book trade, though providing the nation's intellectual and cultural food, was apparently not at the time considered by the public to be subject to the same measure of criticism. The publishers and booksellers of tradition were quick to try to combat the new practices, for apparently Lackington was not the only offender. A resolution had been passed by over six hundred members of the trade that no new publication should be retailed at more than 10% below the publisher's price, but nevertheless a number of booksellers, for the sake of quick returns, were accepting less than half the 25% profit to which they were "entitled".[5]

So the war began between the price cutter and the rank and

[1] Cf. Charles Knight, *Shadows of the Old Booksellers*, 1865, pp. 288–90.
[2] Cf. Marjorie Plant, loc. cit., pp. 433–4. [3] Cf. Knight, p. 290.
[4] Cf. Hermann Levy, *Large and Small Holdings*, Cambridge, 1911, historical chapters.
[5] Cf. Marjorie Plant, p. 334.

file of publishers and booksellers. It was not a fight of isolated firms; organisation on modern trade association lines began in 1812,[1] and was remodelled in 1828. The main object was to decide what was to be termed a "remainder", as Lackington had based his business on the plea that surplus copies were remainders. Leading booksellers and publishers met at the Chapter Coffee House to agree upon a definition. They decided that the term "new work" was to include books published or reprinted within the preceding two years and protected by copyright. Now, as Plant reports, "that the one element of uncertainty had been removed, publishers and booksellers were quick to combine and to draw up regulations inflicting penalties upon such booksellers as did not subscribe to their policy". The boycotting policy had begun. There were powerful adversaries to the trade association, such as William Pickering, whose book, *Booksellers' Monopoly*, published in 1832, made a sensation. Drastic boycotting measures were taken against him and others. The trade committee circulated a placard bearing his name and those of a few others, calculated to ruin their reputations. When he applied to various publishers for copies of their works, Pickering met curt refusal. Among such firms were John Murray, Longmans and others. Babbage, in vain, proposed a counter association of authors.

In 1848 a new Booksellers' Association was formed. This time the trouble arose over a bookseller named Bickers, accused of passing on part of his discount to customers. And now follows an exciting development, which Miss Plant has described in its most outstanding phases,[2] and which would be well worth more elaborate research by a monographer. Gladstone made a strong protest at Bickers' boycott; John Murray III tried to justify it by explaining the necessity of the big margin-discount in this particular trade. *The Times* of 30 March 1852 asked why publishers should "follow the retail dealer into his own shop"—a question which could well be repeated in our days in the case of innumerable other trades. Gladstone, on 12 March 1852, in the course of a debate on the Paper Duty, spoke of the most imprudent struggle in progress in the book trade: "The truth is," he claimed, "that monopoly and combination have gone near, if not to, the extinction of the trade itself, to reduce the sale of books to a minimum." It was the

[1] Not mentioned by Plant, but by F. A. Mumby, *Publishing and Bookselling*, 1934, p. 332.
[2] Cf. Marjorie Plant, loc. cit., pp. 435–9.

time of Free Trade. Free trade in books seemed an appropriate parallel to free trade in corn.

> I cannot . . . imagine that, after the assize of bread has been put down, and a system of free competition introduced into the sale of almost all articles, a wretched monopoly should be permitted to narrow and debase the trade in books,

wrote J. R. McCulloch in a letter to John Chapman, himself a bookseller and publisher. The firm of John W. Parker & Son sent the following inquiry to each of a hundred writers:

> If a retail bookseller, of ascertained credit and respectability, applies to your publisher for copies of any book in which you are directly or indirectly interested, which he is ready to purchase on the terms at which the publisher has offered them to the trade at large but with avowed intention of retailing his purchases at a smaller profit than provided for between the wholesale and the retail price fixed for single copies, do you consider the intention to sell at a low rate of profit a good and sufficient reason why the publisher should refuse to supply him with books which he is ready to purchase and to keep in stock at his own risk?

The authors who were asked for their opinion included the most famous of the times: Dickens, J. S. Mill, Herbert Spencer, Tennyson, Carlyle, Kingsley and Newman. As Plant affirms, almost without exception they were against any interference with the retail policy.

The Times took a courageous part in the fight against this trade association. It is worth while to repeat its words to-day as they may be well applied to trade associations elsewhere; *The Times* wrote: [1]

> It is exceedingly amusing . . . to see how piously the name and theory of actual " Protection " are eschewed by the advocates of the Association. . . . They declare one and all, with great statistical display, that upon less than the present profits the booksellers " cannot live ". If this indeed is the case, there can be no necessity for an Association to prevent them from doing so. If a bookseller *must* charge 25% profit he will do so under the operation of a necessity much more surely, and far more naturally, than under the dictation of the Executive Council. It is certainly possible . . . that books under such freedom of trade might be sold " at one price in one street and at another in another ", according as one dealer found it practicable to " live " upon less than another; but this, we take it, is a very general aspect of wholesale trade.

It is, indeed, interesting to note how similar conditions produce

[1] Cf. Marjorie Plant, loc. cit., p. 438.

similar reasoning in economic epochs so different as that of the early 'fifties and that of our own days of "branded" goods in almost any trade. Leaving out the book trade, the words of *The Times* could be applied to almost every retail trade of our own days.

In April 1852 the crisis came to a temporary end. In a conference convened by the Booksellers' Association it was ruled by the president, a no less eminent legal authority than Lord Campbell, that the association was an illegal conspiracy. For more than thirty years after this decision free trade in books was established. Yet the subject never disappeared from the minds of publishers nor from public discussion. It was amply discussed before the Royal Commission on Copyright of 1876–7. William Longman, giving evidence before this Commission, was in favour of continuing the $33\frac{1}{3}\%$ discount to the trade on the ground that a lower profit would not allow the retail trade to make a living. He agreed, at the same time, that in London and most of the large towns books could be bought from five to twenty per cent below the prices given on the covers. But the public opposition to a new trade association remained. Before the same Commission Mr. T. H. Farrer (later Lord Farrer) declared:

> . . . I wondered whether there could be anything true in the science of Political Economy, when such an absurd practice as that contended for by the publishers could prevail in what ought to be the most intelligent trade in the country.[1]

Towards the end of the 'eighties a new attempt was made to organise the trade. "The book trade," so writes Marjorie Plant,[2] "had been one of the last to throw over the restrictions which had grown up around it. It was to be one of the first to return to it." In September 1887 the prospectus was issued of a proposed "Authors' and Booksellers' Association", whose primary object was to be the production of new and standard books at net prices. The idea was to narrow the margin between the cost of production and the price asked of the public so that the price fixed *could* only be net. Frederick (later Sir) Macmillan took the lead in the new movement. The so-called "net book agreement" was his work.[3]

[1] Cf. Prof. Arnold Plant's interesting study, *Some Modern Business Problems: A series of studies*, 1937, p. 323.

[2] Cf. p. 441.

[3] Cf. Sir Frederic Macmillan, *The Net Book Agreement, 1899*, MacLehose, 1924.

Endless difficulties had to be overcome, so he writes later:

> and it was to the persistence of the publishers rather than to their own efforts that booksellers owe this beneficent reform, which protects [*sic* !] them from undercutting and ensures that a book published at a net price shall be sold at that price and no more and no less.

In 1890 the London Booksellers' Society was formed, to be merged five years later into a new body, the Associated Booksellers of Great Britain and Ireland. One of the first acts of the Association was to express approval of net prices and to call upon publishers to enforce the system by more stringent regulations. The Publishers' Association of Great Britain and Ireland was formed in the same year.[1] Since the end of the 'nineties the Association, or Associations, appear to have taken drastic steps to enforce their rules. Booksellers who agreed to sell at fixed prices were to be allowed trade terms, but all others should be charged the full published price. The first book sold under the " net book agreement ", ironically enough, was Alfred Marshall's *Principles of Economics*.[2]

We shall not deal in further detail with the book and publishing trade. This group of trades represents a type of business distinct from others in many respects ; it is based upon the existence of great risks, of the constant possibility of unforeseen events which may fundamentally and suddenly alter the chances for the sale of costly books, and of the necessity to put forward many publications for the sake of their intrinsic value, which does not always correspond to the greatest turnover in a short time. The structure of this trade, indeed, differs widely from the great majority of trades which deal with commodities in daily demand. The existence of discounts which appear wide and, viewed from the sale of a single copy, very liberal to the retailer, must be seen in the background of such special conditions. It is noteworthy that Stanley Unwin, a leading figure of the British publishing trade, asserts that " taken as a whole trade terms have materially improved, and it is now to increased sales rather

[1] Cf. Marjorie Plant, loc. cit., p. 442 ; the statement by the Report on Restraint of Trade, p. 11, that the first Publishers' Association in the book trade was founded in 1896 is therefore incorrect.

[2] Cf. Arnold Plant, p. 323. While in England the booksellers' and publishers' association could develop without any legal interference, in the U.S.A. on 1 June 1908 a decision was given in the Supreme Court directed against the American Publishers' Association and the American Booksellers' Association, that no publishers had the right to dictate the price at which books should be sold (cf. Marjorie Plant, p. 443). Combination for such purpose was judged to be in restraint of trade, and offenders were rendered liable to heavy damages.

than to increased discounts that booksellers should look forward for increased profits ".[1] He does not declare himself in favour of a minimum discount of $33\frac{1}{3}\%$ " under all circumstances ", and his argument is rather that high margins mean high prices for books, small turnover, and thereby smaller profits to the bookseller.[2] The trade association movement in the British publishing and book trade has never been left without challenge. The last years have seen many sixpenny editions—formidable competitors to the expensive book which cannot be counteracted by trade practices and monopolist agreements. The only effective remedy to counteract " Lackington's " never-dying attempts seems to be to follow suit. In August 1940 the trade journals could inform the public of the formation of " The British Publishers' Guild " which would publish *6d.*, *9d.* and *1s.* books.

> The flow of cheap books (either reprints of books which their original publishers had laboriously built up or new books by authors whom their original publishers have spent much time and money in establishing)[3] has wandered outside trade channels. The main object of the British Publishers' Guild is to bring back the stream to the book trade's own garden.[4]

Five outstanding firms of publishers composed the first Committee of the Guild. One can fully understand the position of the publishers, even if one is not inclined to accept their somewhat pretentious claim of " the book trade's own garden ". The publishing trade differs from other trades ; it is an extremely risky one ; it is to some extent dependent upon considerations which are not merely " commercial " ; it serves the nation's moral and cultural objects as no other trade. It cannot be said to have ever overcharged the public, and it may claim a certain protection from those who want to exploit its successes without sharing its risks. But all such considerations should not prevent the existence of agencies which are capable of supplying the public with cheap standard books—and it is gratifying that the Guild appears to have found the way of complying with this demand. So, competition has not been in vain.

As an example of the working of the forces which lead to trade associations, the history of the publishers' and booksellers'

[1] Stanley Unwin, *The Truth about Publishing*, 1926, p. 189.
[2] Ib., p. 185.
[3] The argument is not entirely correct. The Pelican edition of the P.E.P. report on *Britain's Health*, with a foreword by Lord Horder, may be cited as an example. Cf. also " Cheap Books " in the *Economist* of 14 Sept. 1940.
[4] Cf. *Bookseller*, 22 Aug. 1940 ; see also pp. 92–3.

associations is of great interest. It actually embodies all the features of modern trade associations in the retail business. It is the first outspoken attempt to combat price cutting; it makes use of trade practices, such as boycotting clauses and stop lists; it serves the producers (here the publishers) not only to maintain their own prices, but also to keep alive by the control of margins those on whom they have to reckon for the distribution. In this sense the history of booksellers' and publishers' association in the past may well be considered as the forerunner of the typical developments of trade organisation to-day.

Another early example of the regulation of competition by a trade association is afforded by the history of the grocery trade.[1] Before the advent of Free Trade, the grocer's stock was extremely limited in range; the chief goods sold were tea, coffee, rice and perhaps tobacco, wines and spirits. Not until the 'fifties, with the development of better overseas communications and a less restricted foreign trade, did the variety of goods in the grocer's shop window begin to grow. In 1861, for instance, it became possible, for the first time, to sell tea other than on duly licensed premises, and at once hawkers began to compete. The grocer, so the hawkers boasted in undercutting his prices, could not afford to sell tea at 2*d.* per pound profit, as they could. The grocers immediately tried to crush this new competition. The grocers of Spalding entered the lists against the newcomers by selling teas themselves in the market-place at reduced prices, whilst others, as at Holbeach, employed a local auctioneer to sell teas for them. Meanwhile the co-operative store was advancing fast. "No trade has felt the competition of the co-operative store more keenly than that of the grocer and provision dealer," so writes Rees, calling net price or dividend method of trading "a powerful and formidable policy, as against the legitimate [*sic*] trader whose capital is invested in his business, and whose endeavour is to make enough interest to live upon first, and to save with, if possible, afterwards." [2] It was felt by the grocers that combination must be met by combination, and so Grocers' Associations began to develop throughout the country.[3] The first local Association established with the object of dealing with competition was, as far as is yet known, the

[1] We follow here, so far as not otherwise stated, the very elaborate study of J. Aubrey Rees, editor of *The Grocer's Assistant*, *The Grocery Trade*, Vol. II, 1910.

[2] Cf. loc. cit., pp. 228–9.

[3] These should be carefully distinguished from merely benevolent institutions of a friendly society character (Worshipful Company of Grocers, etc.).

Manchester Grocers' Association, formed in 1855. The main object of the Association was to stop the practice among retailers of selling sugar at a loss. Price cutting in sugar had been a feature of the grocery trade to be traced back to the 'thirties.[1]

Like most of such pioneer organisations the Association was shortlived, but it was re-established in 1873, "since which date it has been in the forefront of the grocers of the country" (Rees). In 1873 another association bearing the name of the Birmingham and Midland Counties Grocers' Protection and Benevolent Association was formed. The name, combining the friendly society feature with that of trade "protection", should bear some relation to the commercial purpose of this association, though Rees does not refer to it. But he mentions that the object of the association was to render assistance to its members "in compelling the tea merchants in London and elsewhere to protect the trade generally against any loss they sustain from the sale of tea as received by them from H.M. Customs". We have already referred to the undercutting in this line of the grocery trade. By 1891 so many trade associations had sprung up that it became possible to form a Federation. Mr. W. H. Lever, M.P., who took a leading part in the new foundation, declared at a meeting that "he did not think that a Federation would stop competition, but it would certainly enable them to meet it in a better way"—and this was expressing the matter very cautiously. One of the objects was to combat "Civil Service" trading; as early as 1886 a Traders' Defence Association had been instituted in Scotland to fight the "injurious" effects of this sort of co-operative dealing. Further, Mr. Lever declared that the Federation would not be able to stop "cutting", but he considered that it would assist to clear away the "misunderstanding" [*sic*] which was often the cause of it.[2] It is interesting to note that at this meeting, which led to the foundation of the Federation of Grocers' Associations of the United Kingdom, the question of the profit on proprietary articles was already discussed. It is noteworthy that at the beginning the Proprietary Articles Trade Association was a rather shadowy organisation under the influence of Grocers' Associations,[3] a point apparently overlooked by the Report on Restraint of Trade, which reckons this association as being the oldest "in question",[4]

[1] Cf. Rees: "the cutting of sugar prices was by no means unknown at this date" (1837), p. 177.

[2] Cf. Rees, loc. cit., p. 262.

[3] Cf. Rees, p. 302.

[4] See Report on Restraint of Trade, p. 11.

whilst, as a matter of fact, the long history of the grocers' trade associations, beginning in 1855, precedes this association by exactly forty-one years.

We conclude here our narrative of early trade associations. The two examples which we have been able to trace show a development which in its wide scope may be considered as typically modern, while not yet related to certain features of industrial and commercial combination which have developed under the auspices of advanced capitalism. Future specialised studies in the history of economic development and organisation in the nineteenth century may add more examples.[1] It should be clear from the history of these early associations, however, that such associations had by no means to wait until the age of trustification and cartelisation in industry, the monopolisation of raw materials, the formation of big vertical and horizontal concerns, and the dominant corporation, had arrived. They could, under certain conditions, spring up anywhere and at any time.

[1] For early attempts in the iron trade some interesting facts may be gathered from Professor T. S. Ashton's excellent study, *Iron and Steel in the Industrial Revolution*, 1924, p. 162 sqq.

CHAPTER 3

TWENTIETH-CENTURY DEVELOPMENTS

> The prejudices of some political writers against shopkeepers and tradesmen are altogether without foundation. . . . Their competition might, perhaps, ruin some of themselves; but to take care of this is the business of the parties concerned, and may be safely left to their own discretion.
>
> ADAM SMITH, *Wealth of Nations*, Ch. V.

ADAM SMITH'S thesis was possibly true until the end of the nineteenth century, in spite of the contrary examples which we have been able to adduce. Such " exceptions " would probably in his mind only have served to prove the " rule ", although for us they appear to prove much more, and to show how associative price regulation may develop among traders anywhere at any time. But taking into consideration the general trend of trade organisation one may well say that the end of the last and the first decades of the new century saw a decisive change from competitive to associative organisation in almost every trade in Britain. Indeed, the face of the retail trade had begun to change. Liberal writers of former epochs would scarcely recognise it any longer. There is no difficulty now in finding examples of trade associations. They cover the whole field of retail business activities. When the Committee on Restraint of Trade was sitting it could interview representatives or receive memoranda from such associations in all possible branches; they did so as regards department stores, the chemists' trade, the photographic apparatus and materials' trade, the flour and bread trade, the grocery trade, the chocolate and confectionery trade, the tobacco trade, the newspaper and periodical trade, the stationery trade, the publishing trade, the gramophone trade, the electric trades (comprising electric lamps, radio retailers, etc.), the motor, cycle and tyre trade, the hardware trade, the building material trades, the textile and clothing trades (among them retail drapers, outfitters, garment makers and milliners).[1] All these associations were the object of inquiry about price maintenance and trade practices.

The existence of so many associations having for their purpose

[1] Cf. *Report*, loc. cit., Appendix, pp. 35–7.

the domination of their trade to modify individual competition should serve to dispel the argument of certain economists that the presence of easily exploitable conditions of monopoly must be given to secure the life of cartels and that if only such conditions were destroyed—i.e. natural monopolies (of the soil), trade marks and patent legislation and tariffs—free competition would reign again.[1] The retail trade has in general not profited by such monopolist conditions. Where they existed—for instance a monopoly site of shops in certain parts of a town—they did not for more than a century result in a monopolist organisation of a trade. It may certainly be contended, of course, that the large and rapid development of quasi-monopoly in British industry since the end of the nineteenth century has exerted its influence upon the development of quasi-monopolist trade organisation, but our foregoing examples in the publishing and grocery trades show that such development cannot be regarded as a *conditio sine qua non.*

There is no doubt that certain structural changes relating to the size and unit of the retail shop may have served to accelerate the process of trade organisation on the association pattern since the end of the nineteenth century. How far this transformation was due to the changing structure of retail selling itself and how far to changes in the forms and dimensions of the units of industrial production is less certain. Both developments would fall into the same category of concentration of undertakings ; but of course there is always a very lively reciprocal action between these developments, as cartelisation or trustification of certain products may stimulate attempts to monopolise their retail distribution, while on the other hand concentrative tendencies in the retail trade, quite independent of any interference on the part of manufacturers, may serve the latter's quasi-monopolist purposes. The Report on Restraint of Trade has hinted at the former possibility, but according to its terms of reference abstained from investigating it.[2] Yet some inquiry into the structural changes, both in industry and retail trade, which have led to the movement of concentration which plays so important a part wherever monopolist combination

[1] Cf. Prof. L. Robbins, *The Great Depression*, 1934, p. 189 and *passim.*

[2] Cf. loc. cit., p. 34 : "Trade practices into which we have inquired impinge upon a much wider problem—the problem of monopolistic combinations and trusts—which is outside the scope of our reference. If, at some future time, the question of public policy in relation to this wider problem should be examined, the possibility of support being given by the price maintenance system and boycotts to monopolistic combinations and trusts ought, we think, not to be overlooked."

arises [1] should not have been outside the scope of their investigation.

It is, in the first instance, noteworthy that in most associations the big firms play the leading role. In fact, the big firms are mostly the driving spirit of the trade association in the beginning. We have already heard of the important part which, for instance, the leading publishers played in the trade association movement in the book trade, when for the first time price cutting was fought by associative measures. We could observe the influence of the leading people in the grocery trade. In the clothing trade it was stated not very long ago that " the trade is fairly well organised as regards the larger firms, both wholesale and retail, but that among the very large number of small firms . . . organisation is practically non-existent ".[1] It is characteristic that " small trader " in many cases is synonymous with " independent trader " and " prefers to call himself " so.[2] Even in a trade as specialised as that of the undertaker, the distinction becomes more and more visible. The small local undertaker, combining with his business frequently some other job or occupation, stands in contrast to the large firm with its much admired park of motor hearses (sometimes lent to " uncombined " smaller undertakings) and its ample accommodation and means for any desired funeral pomp. The latter type are the firms which have for many years taken the initiative in demanding registration for undertakers, a plea embodying price regulation and control of certain trade practices as exercised or envisaged by the trade association. Indeed, it was explained by one of their trade journals when the drive for such registration on trade association lines was at its height that opposition was to be expected from the less efficient competitors, " the cheap men down in the back street ".[3]

In many sections of retail trade the big firm is now not only the outspoken rival of the smaller shopkeeper, but also the leading

[1] Cf. Hermann Levy, *The New Industrial System*, 1936, *passim*.
[2] Cf. *The New Survey of London Life and Labour*, Vol. II, " London Industries ".
[3] Cf. Sir Arnold Wilson and Prof. Hermann Levy, *Burial Reform and Funeral Costs*, 1938, pp. 164, 154 and *passim*. Viscount Samuel described the matter very clearly in the H.L. Debate on the Funeral Directors (Registration) Bill on 2 June 1938 : " The great proportion of the funerals in this country are of course conducted by persons who are not, so to speak, wholesale funeral directors, but who are builders or village carpenters, or who combine some other occupation with occasional service at a funeral ; and the effect of a Bill such as this upon the customs of the village community must be carefully considered." Some illustration of the adverse attitude of these small undertakings towards the aspirations of the trade associations may be gathered from Wilson and Levy, loc. cit., p. 164, ft. 2, and p. 163.

influence in the associations which are formed; thus the big firm plays an important part in determining the small shopkeepers' condition no matter whether the latter is outside or inside the association. It is nowadays of little value to count the numbers of independent retail firms in a trade if one wants to follow the development of retail trade policy; it is more realistic to consider the much fewer large firms which are likely to control the policy of the trade association. When in 1906 the Saddlers and Harness-makers' Proprietary Articles Association, formed in the previous year, issued its first "protected list", it counted as members only 316 members out of 5,000 retailers in that branch, but it numbered 20 producers "including most of the leading houses".[1] We have seen in our former chapter that the name of Lever figured prominently in the first attempts to organise trade associations among the grocers. The importance of the Federation, the origin of which we have described, was certainly considerable a decade later, yet it comprised no more than 14,000 members out of some 70,000 in the trade.[2] In the proprietary articles trade, where in the 'eighties severe competition among retailers had been rampant, Messrs. Burroughs, Wellcome and Co. were the first "to protect the retailer", and they were soon followed by other important firms; the agreements between such firms for fighting price cutting led in 1896 to the first foundation of an association; in 1905–6 not less than 3,647 retailers belonged to the Proprietary Articles Association, with 22 wholesale members—"practically all the leading patent medicine houses in the country".[3] The "stop list" of this association enumerated in 1897 no less than 142 articles; any trader who persisted in cutting any one of the articles was placed on the stop list.[4]

Where the development of trade associations is regarded as being too slow, stress is placed on the fact that there are too many small traders in the particular branch. "The retailers' associations are not taking the place that might be expected in shaping the future trend of retail distribution," so writes a special investigator of the matter in the *Manchester Guardian Commercial*; this he attributes "to the traditional reluctance of small men to join in any combined effort to improve their position and that of others similarly placed".[5] We doubt whether the first sentence of lament is justified. The effect of trade associations on limiting

[1] Cf. H. W. Macrosty, *The Trust Movement in British Industry*, 1907, p. 255.
[2] Cf. Macrosty, loc. cit., p. 255 sqq.
[3] Cf. Macrosty, p. 250. [4] Cf. Macrosty, p. 250.
[5] Cf. *Manchester Guardian Commercial*, 26 May 1939.

competition has certainly been substantial; the Report on Restraint of Trade bears testimony of it. In many instances the efforts may have been greater than the results actually achieved. But we agree with the author about one of the main obstacles, and we also agree with his statement that " in the main the membership of each retailers' association represents only a fraction of the total number of shopkeepers ". This statement should not be considered as proof of the ineffectiveness of such associations, for the volume of turnover is in many cases more important than the number of retailers, but it may be regarded as further evidence that the large firms are expected to be the most active members of trade associations.

The development of a growing distributive undertaking should thus form a primary explanation of the progress of trade associations of the type with which we are concerned. This would well conform with the fundamental explanation of industrial combination as the author has attempted it in his former writings,[1] in which he tried to show that the conditions making for more concentrative forms of units were always in the background of combination—not the accidental existence of raw material monopolies, tariffs, patents, etc. Such accidental conditions existed before the movement towards combination had arrived, and they are sometimes present even now without leading to combination.[2] On the other hand, where combines exist and are powerful, the condition of concentration of units, in some form or other, must be given. Even in the absence of such condition industrial combination may exist for some time, but without lasting success.[3] It is certainly much easier to understand the movement towards trustification in industry than that of combination in the distributive trades. The large number of members of such trades, running into tens of thousands, appears at first sight to rule out that famous argument, that the paucity of competitors is the fundamental condition of modern monopoly. That is why most writers on industrial organisation at the beginning of the century regarded competition in the distributing trades as assured, in spite of the existing examples to the contrary. But the development of larger and larger units in the distributive trades has rapidly weakened this assumption from within, although it is not yet wholly destroyed.

[1] Mainly in *The New Industrial System.* [2] Cf. British coal industry.

[3] This is the opposite of what Prof. Sargant Florence aptly called the " logic " of industrial organisation. Cf. P. Sargant Florence, *The Logic of Industrial Organisation*, 1933, p. 42 and *passim*.

CHAPTER 4

THE GROWTH OF LARGE DISTRIBUTIVE UNDERTAKINGS

The retail trades appear to be the last stronghold of competition.
HENRY W. MACROSTY, 1907.

The small shopkeeper is in some ways a curious survival.
ROBERT SINCLAIR, *Metropolitan Man*, 1937.

THE movement towards concentration of units has, in our opinion, wherever it is found, its fundamental and exclusive explanation in certain forces of modern capitalism which relate to the structure of production and distribution. The development of transport, of the technique of conservation of goods, and of improved communication systems necessarily led to bigger units in industry and in trade.[1] Centralisation of distribution meant centralisation of production wherever it became possible. But centralisation of distribution at first did not mean concentration of retail business ; it merely meant producing for consuming centres, far away from the producing centres, producing for whole well-defined regions, national or even international, but certainly not local. This centralisation seemed for a long time to be an isolated development, as Macrosty's remark, quoted at the head of this chapter, shows. But at last the movement of concentration set in here as well. There were a great many different reasons for this, but all of them were derived from the same basic cause. At bottom, the capitalist development of distribution, being a movement towards the sale of mass-produced goods to uniform customers in centralised markets necessarily and inevitably led to an enlargement of the units of distribution. But although the fundamental driving force was the same, it operated in very diverse ways.

We shall first deal with the structure of the retail business of a larger unit as planned regardless of any links it may have with manufacturing units. The growth of towns and cities necessarily stimulated the growth of large stores ; with a steady stream of

[1] Cf. Hermann Levy, *The New Industrial System*, 1936, whole Part III, "The Economics of Industrial Concentration ".

customers making their purchases within a well-defined area, it became possible to keep far larger stocks of goods of far greater variety than the small shopkeeper in a less populated district could ever do. So the department store came into being; the large shop and the department store are the counterpart in retail trade of the big industrial plant. They are the expression of modern capitalism seen from the point of view of the *technical* unit. In industry large plants have found it profitable, from an *organisational* point of view, to combine into bigger financial units or horizontal combinations; in the retail trade the movement towards horizontal combination has likewise been apparent. Such rationalisation has been rapidly proceeding in the distributive trades of London. It is found in the form of horizontal combination, in the drapery and grocery trades, in the meat and milk trades, in the boot and shoe, drug, furnishing and tobacco trades. It has sometimes taken the form of acquisition of financial interest through holding companies in shops which continue trade on much the same lines as before; sometimes it takes the form of acquisition by a large store of businesses to which it applies certain standard methods of management together with centralised buying. One huge combination controls thirty-six large stores. An investigator wrote some years ago:

> A result of this kind of absorption of many concerns is that a definitely luxury type of store may control shops of a cheap and popular type in other parts of London, for which the controlling store does the buying.[1]

A very interesting example of the concentration of the retail business is found in the milk trade of London. Two great concerns dominate the field of the retail or distributive side of the milk business. Both buy their milk direct from producers and process it themselves for retailing to their customers. One of these companies in addition to the milk trade has a chain of tea shops with about 260 branches in London and suburbs. The other company, formed in 1915, by amalgamation of the principal wholesale milk businesses and country creameries, has approximately 750 branches in London and employs over 12,000 persons. Both organisations work in harmony and pursue the same general policy in respect of prices and conditions. The small milkman still exists, of course, but under normal circumstances the price of milk for London is set by the two great

[1] Cf. *The New Survey*, Vol. V, pp. 144–5.

concerns and the co-operative societies, the remaining dairymen falling into line.[1]

The second change in retail trade structure came with the so-called multiple shop, the effect being again that of concentration, but of a rather different kind. In this case the retail unit, which may vary considerably in size both in the same chain and in different chains, is multiplied in a number of different shopping areas, either locally or nationally, and the resulting multiple organisation is controlled by one central management.[2] In a given locality, the multiple unit does not necessarily have a bigger turnover than the local retailers, and the multiple shops generally restrict themselves to the handling of a " fairly small selection of goods ", their idea being to operate these sales over a whole district or country.[3] Neither the multiple shop proper (i.e. the one which distributes merchandise covered by a single trade such as groceries, boots and shoes and stationery) nor the " fixed price " chain store [4] is necessarily a dangerous competitor to all shops, though they are dangerous competitors to many small shops. Similarly, they are not necessarily competitors in the handling of all merchandise, but are formidable competitors over a wide range. A third class of shops of the same type is the co-operative store. The retail co-operative societies attempt to derive the benefits from large-scale operation by uniting millions of consumers. The department store appeals to the large unorganised crowds by its cheap products made possible by mass-consumption ; the co-operatives organise this mass consumption through the association of consumers. The competitive effect on small and large units is the same ; though, as we shall see later, an important conflict of interest remains between retail associations and co-operative distributive organisation. The ideological impulse behind " co-operation " should not be unduly stressed ; the possibility of mass distribution of well-defined commodities has always been the basis of modern co-operative success, just as it is the basis of the chain and department store. The societies have entered into production for intrinsically the same reasons as those which have linked the large non-co-operative distributive units with production. The competitive significance of the movement in regard to distributive outlets should not be overrated. The total retail turnover of the

[1] Cf. *The New Survey*, Vol. V, pp. 69–72.
[2] Cf. Lawrence E. Neal, *Retailing and the Public*, 1933, p. 27.
[3] Henry Smith, *Retail Distribution*, 1937, pp. 52–3.
[4] Cf. Neal, loc. cit., pp. 27 sqq. and 48 sqq.

co-operative movement in 1939 was £272,000,000; the movement, represented by the parent body, the Co-operative Union, handles the following approximate proportions of the nation's retail trade:

	Proportion of turnover represented by co-operative movement.
Foodstuffs and other groceries	14·1
Piece goods, women's wear, men's wear	6·6
Boots and shoes	9·1
Furniture and hardware	3·5
Coal	13·8

The total production of the two productive organisations—the Co-operative Wholesale Society and the Scottish Co-operative Wholesale Society—was just over £54,000,000 in 1939.[1] The war, as we shall see later, has favoured large-scale distributive units, but it has hampered the co-operative movement in many ways. In view of the development of chain stores and department stores and big distributive units combined with manufacture, the co-operative store tends to be of secondary significance to the competitive interests of the small "independent" retailer.

From the point of view of the structure of the distributive trades, the multiple shop and the fixed-price chain shop mean a further financial and administrative centralisation. It is irrelevant whether in fact the selling machinery is locally or regionally decentralised. Neal and Smith give some interesting figures about the position of these concentrative retail business organisations in Britain. The multiple organisations—excluding co-operative and fixed-price chain shops—are estimated to represent 15–20% of the total retail sales. The proportion varies widely within the individual trades themselves; in the boot and shoe trade, for instance, the multiples are believed to account for probably more than 40% of the annual retail turnover; a multiple tailoring company claims that it supplies one out of every five suits sold in the country; the largest multiple chemist concern, with more than 900 branches, is understood to control about one-sixth of the total trade in its field; multiple grocery concerns probably control a much larger proportion.[2] Such percentage figures may seem small alongside the 50–90% control percentages of trusts and cartels in industry. But they mean that in retail trade a tangible proportion of the trade is in the hands of large firms, and these large firms may exert an altogether overwhelm-

[1] Cf. *Co-operative News*, Nov. and Dec. 1940, and *International Labour Review*, March 1941, pp. 349 sqq.
[2] Cf. Neal, p. 29.

ing influence upon the formation and administration of trade organisations.

We have seen that the grocery trade was one of the first to develop the modern trade association technique. It also offered a particularly promising field for the multiple shop. About ten years ago there were more than 400 of these multiple grocery concerns in existence; they controlled more than 10,000 branches. Further concentration resulted from the amalgamation of these concerns. At the same time, it is certainly not accidental that the movement towards retail business concentration in this branch has been accompanied by a marked activity in the field of trade associations. The central administration of multiple shops is and must always be far more inclined to give attention to matters of trade policy and trade organisation than the small shopkeeper. Just as in modern industry the "commercial industrialist" plays his important part in industrial undertakings while in former days the "manufacturer" was merely concerned with the productive side of his undertaking and the general circumstances of sale,[1] so in retail trade new tasks of commercial organisation and finance have arisen. This result is particularly striking where retail trade has become linked up with production, as the retailer sought to become his own manufacturer or the industrial producer looked for a "tied house" for his products.

The development of the furniture and woodworking industry in London is an interesting illustration of the retailer entering manufacture. Some of the best known retailers have factories in Hammersmith, Camden Town, and Battersea. Most furniture is made throughout by the manufacturer and sold by him direct to the retailer, including the hire purchase multiple establishments; the former non-producing wholesaler is gradually disappearing; some of the large retailing concerns have their own factories, where a considerable amount of cabinet work and upholstery is produced for customers' special requirements. Here two tendencies can be clearly discerned. On the one hand the manufacturer tries to avoid the wholesaler by direct trading with retailers; on the other hand, the growth of turnover is inducing the retailer to become his own manufacturer.[2]

The combination movement downward (i.e. the manufacturer's entry into the field of retail distribution) is even more important in the recent development of the retail trade. In the boot and shoe trade, in tailoring and in chemistry, the retail chains are the

[1] Cf. Hermann Levy, *The New Industrial System*, pp. 228 sqq.
[2] Cf. for details *The New Survey*, Vol. II, 1931, pp. 212–15.

direct outlets for firms of producers which sell their own products almost to the exclusion of anything else.[1] The development in the clothing trade is the more remarkable, for alongside the big factory firms are large numbers of small-scale producers who would never dream of entering the retail business.[2] Thus the movement towards concentration in an industry must not necessarily be comprehensive to allow the entry of manufacturers into the retail business; a few prominent firms may do it, while the largest numerical part of the trade remains as it was before. The Montagu Burton organisation certainly provides the bulk of the merchandise distributed through its own retail branches; the Singer Sewing Machine Company produces all the machines which are sold through its 900 retail outlets. In the boot and shoe trade, Freeman, Hardy & Willis, originally manufacturers, opened a chain of retail shops in different parts of the country as outlets for their increased production, and to-day over 500 branches are operated under the name of this concern. But whilst this firm was originally exclusively a manufacturing business, now only a comparatively small proportion of the merchandise sold in its retail shops is of its own manufacture; the retail "opportunity" has outgrown the manufacturing scope of the business. The case is different with Trueform (J. Sears & Co.). This firm, operating about 700 branches, has always been a distributing business; but it now controls a considerable manufacturing business as well, in order to provide supplies to some extent for its retail trade, and both these concerns are now under the same control.[3] As Henry Smith points out, multiple shops are, in general, no longer *purely* retailing concerns.[4]

Such reciprocal effects find a counterpart in industry. Horizontal combination of units may make it desirable after some time to enter earlier stages of production in the form of vertical combination; vertical combination, exercised by some huge concerns, may lead to a horizontal combination, for instance the buying up of the producers of raw material.[5] Retail combinations on a horizontal basis may, by their very size, be driven into production; big manufacturers may, on the other hand, try to control the sale of their products to the final consumer by entering the sphere of retailing on a large scale.

A very striking early example of these tendencies is to be found

[1] Cf. Henry Smith, loc. cit., p. 74.
[2] Cf. *The New Survey*, Vol. II, p. 255.
[3] Cf. for these details, Neal, loc. cit., pp. 33–4.
[4] Cf. Henry Smith, loc. cit., pp. 73–4.
[5] Cf. Hermann Levy, *The New Industrial System*, pp. 129–31.

in the history of the British tobacco business. In 1901 the famous business of Ogden's was acquired by the American Tobacco Company. It was a significant attempt on the part of manufacturers to capture a market by capturing the retail business. It is quite evident that the retail trade in tobacco and cigarettes offers particular opportunities for such aims; certain shops may occupy favourable sites, even sometimes of a quasi-monopolist character; quite apart from this, the advertising of tobacco and cigarette brands on a liberal scale gives, when once the brand has gained ground, an opportunity of bestowing on some retailers the exclusive right of sale. The American tobacco industry was probably the first to recognise this possibility, but it was nevertheless unsuccessful. Ogden's, as agents for the American Tobacco Company, attempted to capture the English market by cutting the prices of American cigarettes and offering gifts to retailers. The effect of this, however, was to arouse national prejudice; many tobacconists transferred their trade from American to British manufacturers. A counter-organisation was created; the Imperial Tobacco Company of Great Britain and Ireland acquired the firm of Salmon & Gluckstein, which had a flourishing retail business, with 140 shops mainly in London. Amalgamation in the retail trade on a horizontal line had paved the way for a big vertical combination. There was no monopoly, of course, for there were still 20,000 independent tobacconists. Even before the entry of the Americans into the market, the United Kingdom Tobacco Dealers' Alliance had been formed to ensure minimum profits, but the Imperial owned the most esteemed and most advertised brands. After a sharp struggle, an agreement was reached between the British and American interests, and so in 1902 the struggle ended. It had proved, perhaps for the first time in England, how useful a combination of retail units could be to the interests of a producing combine. The experiment was certainly successful. The Report of 1919 could state that the combination had established "a very substantial mastery of the home market", though it had not actually a monopoly, as the specialities in this trade had enabled a small number of firms possessing popular brands to maintain their independence. We shall revert at a later stage to the present position. The earlier development clearly demonstrates how a combination of retail shops may affect the aims of largely concentrated groups of manufacturers.[1]

[1] Cf. Macrosty, loc. cit., pp. 231 sqq.; Levy, *Monopolies, Cartels and Trusts*, 1927, pp. 269–73, and Report on Trusts, pp. 40–1.

The aim of the manufacturer to secure large and regular sales must necessarily increase as the size of his undertaking grows. The possibility of securing an established market by coming to terms with retailers' associations must always be attractive. There is some retrospective piquancy in the fact that Salmon & Gluckstein, before being swallowed by the Imperial, had made a tentative arrangement to manufacture goods on cheap terms for the retailers' alliance, which of course they abandoned on entry into the combine, thus relieving the Imperial of some fresh competition.[1] No better example could be furnished of the latent tendencies of reciprocal influence between large manufacturing concerns and retail associations. A new type of retailer results from this process. "The typical multiple shop is not a pure retailer," so writes Henry Smith, "but is bound up with the financial fortunes of a producing interest."[2] But Henry Smith fails to draw the important conclusion. Just as the old-fashioned owner of a blast furnace differs in his entire commercial outlook from a director in a big steel company, representing a combined undertaking, linked up with many technically heterogeneous plants, interlocked with financial companies of a different kind, and thereby drawn into the entire nexus of commercial and financial problems of his trade, so must the smaller retailer of former days necessarily have a very much narrower outlook than his modern rival the retailing industrialist, industrial retailer or administrator of large department stores and multiple shops. The latter appreciate the need for an active policy in the interests of the trade far more than the small individual shopkeeper or retailer can possibly do. They are interested in legislative measures which may have substantial bearing upon their businesses for good or evil, whilst the small men in the trade only feel sporadically and unsystematically about such matters, and may not even have time to attend to them. The modern large-scale retailer, therefore, appears as the representative of the interests of the trade in trade associations ; he is the representative of the trade when weighty matters are debated, though it must be understood that frequently the interests which he promotes are in no sense those of the rank and file.

The actual size of a local retail business will not necessarily be larger than others, when the firm becomes a member of a commercial or industrial combination. Retail trade differs in this respect from industry where, in general, all combination is based upon the production of large units right up to the point at

[1] Cf. Macrosty, loc. cit., p. 231. [2] Cf. Henry Smith, loc. cit., p. 74.

which amalgamation results in the scrapping of most smaller plants. Such a process is by no means the necessary result of retail combination. For example, in all big German towns the great breweries have important interests in the restaurant trade. The development of sharp competition between the big brewery companies, which led to a very marked concentration of breweries during the last thirty years,[1] stimulated their entry into the catering business. In Bavaria and other Catholic parts of Germany, the cloister breweries had always had their own catering business connected with their brewing. To-day the beer-restaurant, either owned by a big brewery or exclusively tied to it, is typical of every big German town; there is the Kindl Bräu or the Loewenbräu-Keller in Munich, and the Patzenhofer-Restaurants of Berlin. They represent tremendous competition to other restaurants, large and small. At the same time, however, the big brewing concerns may own or subsidise the small local inns without any marked change in the size of the catering unit. The licensed premises in England whose tenants have made a contract to purchase their liquors from certain specified firms, under the tied-house system, have not increased in size by doing so,[2] whilst the big beer houses in Germany compete with all other restaurants and even hotels.

It is a curious fact that in Britain such development has been absent, although the tied-house system plays a prominent part in the industry. Some local breweries also act as bottlers of beer for firms of nation-wide importance, thus supplying their tied houses with a proprietary article, but apparently it has not been the aim of big breweries to enter the catering field. "In acquiring licensed premises the brewery is, in England, only interesting itself in its own products, although at a stage further than the actual manufacturer," observes a writer.[3] This may be so, but it does not explain the fact why in other countries a closer relationship between brewery and catering business has been sought, not only in beer but similarly in the combination of the wine trade with wine restaurants (e.g. the Kempinski concern in Germany).

Sandwich bars, which have developed since the Great War,[4] and began to flourish at first in the centre of London—sometimes run by ladies—were frequently shortlived. But the chains of milk bars under the control of one single management represent

[1] Cf. Hermann Levy, *The New Industrial System*, p. 101.

[2] For particulars of the system in England, see Julian L. Baker, *The Brewing Industry*, 1905, pp. 154 sqq.

[3] Cf. *Manchester Guardian Commercial*, 9 Dec. 1938, p. 543.

[4] Cf. *The New Survey*, Vol. VIII, p. 201.

very powerful competition to the small old-fashioned restaurant and other catering establishments both in towns and in suburban districts. These newcomers to the catering trade are small technical units; they try to economise in room, and they do not offer much variety of food; yet the ten Black and White Milk Bars mentioned in the 1940 telephone directory are members of a single limited company, and so, viewed as an "undertaking" and not as "plants" or *Betriebe*, as the appropriate German term goes, they are a highly capitalist business. An undertaking may be much more important than its exterior appearance suggests. Few people may be aware when passing a coffee-stall that some of them have a turnover of £2,000 a year and more, that they have a trade association of their own, the Coffee Stall Keepers' Protection Association, and that they enjoy a monopolistic privilege by being licensed. We do not know what position the large-turnover members have within the association. But as this example shows, no trade to-day can be judged by its outer appearance in respect of the development of large units, either in the form of "plants" or "undertakings".[1] As Neal observes in dealing with multiple shops,[2]

> Some branches are strictly utilitarian in their outward appearance and do not attempt more than to achieve the purpose for which they are intended. Others, such as the Regent Street or Bond Street branches of Boots (the chemists), have a definite aesthetic appeal.

Some multiple shops see a distinct advantage in the fact that external uniformity may have its advertising value, and others prefer to retain the traditional individual appearance of a small shop in some parts of London or in parts of the country.

The development towards large units within the retail meat trade is particularly interesting. According to Henry Smith[3] the meat multiples originated as a specialised channel through which to distribute another cheap foodstuff—imported meat. The stimulus came from a largely concentrated source of supply. The economic purpose of concentration of big firms, covering the whole country from their depots in the exporting centres, was doubtless to equalise the profits on different classes of meat, a trade necessity which results from the fact that nature provides sirloins, ribs and shin in a rigidly fixed ratio which does not correspond to the relatively greater demand for one or another type in different districts. In former days the small butcher simply sold what he had, and he did not care very much if the

[1] Cf. *The New Survey*, Vol. III, 1932, p. 314.
[2] Cf. loc. cit., pp. 36–7. [3] Cf. loc. cit., pp. 74–5.

customer did not always get what he wanted. Modern competition makes it necessary in urban districts to display all kinds of meat in any quantity for any demand. The butcher must handle both home and imported meat in large enough quantities to ensure this. So multiple meat shops appeared, small local multiple butchers as well as those big firms with their depots in the importing centres which operate on a national scale. The multiple butcher's shop hardly differs from the individual old-fashioned butcher except that quantities and varieties may be more ample. But such shops are members of a concentrated commercial unit, and that is what counts in the formation of a trade association.

The Royal Commission on Food Prices discovered that there had been combination among local butchers of very long standing. In Brighton a number of butchers had formed themselves into a company for the purpose of centralising the buying and slaughtering of livestock.[1] The main impetus, however, came from the large meat importers. In 1897 the Union Cold Storage Company was formed; some thirty years later it controlled no less than 2,356 retail shops; this is yet another example of retail concentration developing from above, though in this case the manufacturing element was represented by storage and handling in bulk; most of these shops had belonged to firms like Eastman's, the British and Argentine Company, the Argentina Meat Company and others, so that amalgamation had already been established before. The evidence before the Royal Commission stated that the trade association "had nothing to do with the fixing of the retail prices" (nor was this the case with provincial associations in the meat trade), but the Report of the Commission made it clear that by such combination competition was less than it had been formerly "between the branches themselves". As we shall see later, the limitation of competition does not necessarily find its expression in price fixing alone.

Again, there are a number of trades related to new industries where concentration by amalgamation or commercial combination is hardly necessary for the creation of big units; they result from the modern technique of the trade itself. Motor-cars, for instance, cannot be sold by small retail shops of the traditional type. A relatively large capital is needed from the outset, not only for maintaining the stock of cars needed (even allowing for the extensive credit facilities) but also for maintaining a well-trained technical staff and garage accommodation, for stocking

[1] Cf. First Report of the Royal Commission on Food Prices, 1925, p. 97.

accessories, providing repair facilities, etc. A good site must be chosen for the sale of new cars of standing.[1] Where the motor-car retailer must compete with the outer appearance of the shops of big firms, he must invest large sums ; if he is more interested in the second-hand sale business a more modest apparatus might suffice. But he can never build upon the small financial basis of the average local bicycle dealer. This need for a heavy investment and the consequent urgency of measures to protect it probably explains why the Society of Motor Manufacturers and Traders was formed as early as 1913, and also explains its universality—it claims to include in its membership the bulk of the manufacturers and practically all reputable retailers in Great Britain and Northern Ireland.[2] The whole business was then not more than ten years old ; it was not at all difficult to bring the interests together, as there was no train of small retailers hostile towards associative aims. The "new" unit of retailing need, however, not result from the development of a new industry which from the beginning requires an expensive selling apparatus ; old trades may undergo technical changes in retail distribution which have the same effect. This has been the case with the butcher's trade. The Royal Commission, when discussing the causes of the marked decline of competition in this trade, explained that (i) there had been a diminution of the number of butchers' stalls and barrows, (ii) a public demand had developed for a more hygienic and therefore more expensive type of shop, and (iii) a larger capital was needed to start a new business.[3] The number of butchers was still large ; there were 40,000 at that time.[4] But a strong nucleus of big firms had accompanied the development towards larger technical units. Sometimes the relative rarity of undertakings in new and technically highly qualified industries contrasts with the larger number of undertakings in a similar branch of industry which existed before. There are 42 motor-cycle manufacturers, but some 170 cycle manufacturers and assemblers. The assemblers are in the main small concerns buying parts and assembling cycles for sale under their own name or brand, usually from their own shops. So it comes that there are about 16,500 cycle dealers, but only some 2,000 motor-cycle dealers.[5]

[1] In Paris and Berlin it is (or was) near the Champs-Élysées and the Unter den Linden where the sales departments of such firms as Reynaud, Daimler or Benz were situated ; Rolls-Royce's sales department is in Mayfair.
[2] Cf. Report on Restraint of Trade, p. 13.
[3] Cf. Report of Royal Commission on Food Prices, p. 98.
[4] Cf. ib., p. 82. [5] Cf. *Manchester Guardian Commercial*, 23 Sept. 1938.

At this stage of the inquiry it is not intended to examine the policies and objectives of the big firms in their handling of particular commercial problems. The intention is merely to show the tendency for larger units to develop in the retail trade during the last fifty years. Without such widespread concentration, the growth of retail trade associations with a definite purpose of curtailing competition would still have been perfectly possible. Indeed, it has already been shown that before the last fifty years, long before the modern concentration in business, trade associations of this character were both a possibility and a reality. But whilst they were exceptions, later on the trade association became the rule in all important branches of retail business. Without concentration and combination of units the formation of a trade association is certainly possible, but when a decisive tendency towards concentration develops, trade association becomes almost inevitable. This is what the development of the last fifty years has proved. The growth of large units in retail shops or undertakings embodies the tendency to achieve technical rationalisation in organisational matters for which, in many cases, the association offers the ideal framework; the development of larger units represents the beginning of quasi-monopolist tendencies which may be further exploited by a cartelisation of retailing. How far this succeeds—that is, to what point it is actually possible to carry this quasi-monopoly—remains a very open question. But this is relatively immaterial. The essential characteristic of the new organisation is the tendency towards monopolisation by a nucleus of firms, operative in fact to a greater or a less extent. The large unit in retailing plays a leading part in deciding business policy, and thereby becomes a much more potent force in the promotion and control of trade associations than the small shopkeeper and retailer.

All these causes making for the development of larger units in retailing may be attributed to the very fundamental facts of the technical structure of distribution. The root of the matter lies in the mass distribution of standardised manufactured goods. From the manufacturer's point of view, and in particular from that of the modern concentrated concern, distribution may represent decentralisation, but within the sphere of retail distribution, modern conditions of mass demand for standardised goods has meant more centralisation. The large shop and the department store are the result of these forces acting on the size of the technical unit. Combination of retail undertakings in the form of multiple shops and chain stores (with the co-operative store)

is the result of the same forces acting on the size of the commercial undertaking. Once grown, the retail unit seeks vertical combination by entering manufacture ; in the same way it may be acquired by a manufacturer ; such vertical combination means further enlarging of the business unit. The development of technically advanced new industries again enlarges the big retailing unit. This complex of forces, all springing from the same fundamental source of advanced capitalist development of mass manufacture and distribution, has created the dominating organisation of modern retail trade, the trade association.

CHAPTER 5

THE SCOPE OF NON-COMPETITIVE ORGANISATION

> The parts of the monopoly are twaine. The restraint of the liberty of commerce to some or few, and the setting of the price at the pleasure of the monopolist to his private benefit and the prejudice of the publicke.
>
> MISSELDEN, *Free Trade*, 1622.

THE quasi-monopolist organisation gradually established by trade associations differs in structure in many respects from industrial combinations with which it is frequently closely allied. Industrial combination, represented by cartels and trusts, is in general exclusively concerned in its initial stages with organising the monopoly of certain types of manufacture. Sometimes such combination concerns itself with other branches of economic activity. The American oil trustification depended less upon the monopoly of wells and refineries than upon that of the means of transport—the pipe lines to the coast; in some branches of the overseas fruit trade (e.g. bananas) monopoly expresses itself not in the concentration of plantations, but in domination of the trade by ownership of a fleet of merchant ships of a special type. But such cases may well be considered as exceptional. Trustification by vertical combination may seem to be a conglomeration of productive processes hitherto unconnected with each other, and cartels of several industrial groups may enter into closer relation with each other—thus also linking stages of the productive process which were formerly unconnected—but this in no way implies any "un"-industrial activity. Manufacturers forming such trusts or being members of such cartels remain very definitely within the scope of their professional activities and knowledge. Apart from some new tendencies to link up industrial combinations with huge financial interests and transactions,[1] which compel the trust to enter the new field of "finance", industrial combination remains definitely "industrial". This is an important point of difference from trade associations.

We have shown in our historical survey that there are examples

[1] Cf. Hermann Levy, *The New Industrial System*, Part V. "The Finance of Big Units", *passim*.

of trade associations which have no link whatever with similar organisations of their manufacturing suppliers. In the book trade there was an early example of this, although it might perhaps be argued that booksellers could hardly have combined without the backing of publishers. In the grocery trade, however, early combination had little to do with manufacturing influence, and this is still the case, although there is some reciprocal activity between certain producers' associations and the grocery associations; retailers are organised locally into grocers' and provision dealers' associations; the local associations are federated in the National Federation of Grocers' and Provision Dealers' Association (the Grocers' Federation). The dealers are thus conveniently organised on a national scale in the Grocers' Federation. Other grocers' interests are less comprehensively organised. Wholesalers' organisations include the Wholesalers' Distributors Association, the North of England Wholesale Grocers' Association, the National Association of Produce Merchants and similar bodies. As the *Manchester Guardian Commercial* observed not long ago, "it is perhaps a weakness that the wholesale and producer ends are not so well focused as the retailers' interests".[1] In one particular branch of the trade—the sale of grocers' proprietary articles—a closer link between retailers and manufacturers was effected in 1933. The G.P.A.C., the Grocers' Proprietary Articles Council, was formed; this includes retail, wholesale and manufacturers' interests. This, according to the quoted source, was considered as the first step towards establishing price maintenance on a more secure footing. There can be no doubt that the weak position of manufacturers in this branch is much lamented by retailers.

> The trouble with many manufacturers of proprietary articles (in the grocery trade) is that they want to run with the hare and hunt with the hounds [so we read in a trade journal]; they are ready to supply the cutters through any outside agency that is available and, at the same time, send all sorts of threatening letters to their direct customers telling them what will happen if they sell the particular articles below the agreed price, no matter how much protected prices are being infringed in the immediate district.[2]

Among the manufacturers combination is weak, to the detriment of the strong attempts to limit competition on the retailers' side. The writer of the article mentions the organisation of the tobacco combine and its influence on cigarette competition as contrasting

[1] Cf. *Manchester Guardian Commercial*, 26 Aug. 1938, p. 190.
[2] Cf. J. T. Clark in *Grocery*, Feb. 1940, p. 47.

with the grocery trade, " the manufacturers having taken a strong line of action in having all their goods code-marked, and their customers, both wholesale and retail, registered ". But the tobacco trade offers only one example of the great number where manufacturers' influence is overwhelming and decisive, while cases to the contrary, such as that just mentioned, are certainly in the minority.[1] Industrial combination is one of the most frequent starting-points of trade associations with quasi-monopolist aims, although it is not absolutely essential.

Trade associations seldom show the degree of organisational integration exhibited in general by industrial combination. In the great majority of cases they are closely linked with manufacturers and producers. Sometimes these links began from the trade associations which had developed independently of any desire to combine with manufacturers and their associations; sometimes they began with the manufacturers and their associations which aimed at entering into contact with the retail business, and either managed to create trade associations or succeeded in affiliating their interests with already existing ones.[2] The developments in the tobacco industry at the beginning of the century clearly demonstrate both tendencies—the concurrent formation of a dealers' alliance (the existence of which soon became a temptation to manufacturers to effect exclusive deals) with energetic attempts by large manufacturing concerns to gain control over big retailing interests.[3]

A very good example of combined manufacturers entering the retail field of association is afforded by the motor-car trade. The combination movement in this industry definitely began with

[1] In the non-manufactured food trade, trade associations belong to the category which we are discussing here, and will continue to do so as long as home agriculture is not a combination of producers. Nevertheless, retailers' and wholesalers' associations have been in existence in some branches of the vegetable, fruit, flower, and fish trades for a long time. Until 1934 there were two national organisations covering retail traders: the National Federation of Retail Fruiterers and Florists Association, Ltd. The wholesale business is represented by the National Federation of Fruit and Potatoes Trades, Ltd. (cf. *Manchester Guardian Commercial*, 1939, p. 422).

[2] Cf. also H. A. Marquand, *The Dynamics of Industrial Combination*, 1930, pp. 21–3. This very thoughtful author recognised that the entry of the manufacturer into retail business—see our Chapter IV—has become an important new feature of industrial combination, but he has not investigated how far and under what circumstances such interlocking of interests was given its impetus from industry or from trade. This also relates to his statement: " It must be borne in mind that trade associations have led the way in that competition between commodities and between industries which is characteristic of present-day business." The question which remains of importance is who was leading and who was led?

[3] Cf. Macrosty, loc. cit., pp. 231 sqq.

manufacturers. In 1902 the Society of Motor Manufacturers and Traders was formed; it represented with one or two exceptions the whole of the British and foreign manufacturers and concessionaires trading in the U.K. in petrol, steam, and electric vehicles, accessories and tyres, together with motor-boats and their components. But price-maintenance was not comprehensively organised until 1910 when the Motor Trade Association was formed.[1] This association is solely concerned with the observance of the re-sale price conditions included in the conditions of sale of the manufacturers and concessionaires; it has the status of a trade union, in order to enable it to impose penalties. The route between the manufacturer and the retailer is a rather complicated one, leading sometimes through distributors to the dealer, or through the distributor to the dealer *and* to the sub-dealer. Conditions of price fixing, however, remain the same; the S.M.M.T. with the co-operation of the dealer-organisations publishes a list of approved dealers and nearly all the manufacturers have signed agreements to confine distribution to these channels. Certain approved definitions are not without value to those concerned in other trades with the effective definition of dealer-status. "Distributors", "dealers" and "retail-dealers" are clearly defined in their functions and obligations.[2] The aggregate margin of profit varies, but it may be assumed that the regular percentage is 27½% off price list. The margin is shared between the three mentioned categories of traders. The preponderance of the manufacturers in this trade association is obvious; it is based upon the combination existing between the main manufacturers, relatively few in numbers. The position is fortified by the control of the main means of advertisement—the Motor Show, first initiated by the manufacturers in 1905. The sales which individual manufacturers expect from individual distributors and dealers are foreshadowed by this exhibition; as the *Manchester Guardian Commercial* points out, they may "be suitably regarded as 'sales quota' which manufacturers look to distributors to move in the coming season". If distributors and dealers fail to dispose of the "sales quota" allocated to them (which naturally is related to the areas they supply) they may lose their positions. The S.M.M.T. is responsible for the Show, and this manufacturers' control of an exclusive source of advertisement

[1] Cf., for further details, *Manchester Guardian Commercial*, 28 Oct. 1938, p. 395. The development of combination in this trade is very imperfectly described in the Report on Restraint of Trade which omits the early movement among manufacturers, cf. p. 13.

[2] See, for particulars, *Manchester Guardian Commercial*, loc. cit.

is an important element welding the trade together. The Motor Trade Association, indeed, appears to be nothing else than a function of combined manufacturers, having as its sole purpose the protection of retail prices of motor vehicles as fixed by its manufacturers and concessionaire members. The prices which it recognises are not controlled in any way by the Association; they are fixed prices, not maxima or minima. The Association's efforts are exclusively directed towards ensuring that these prices are observed.[1]

In many cases trade associations must conform to the policies laid down by producers' organisations, simply because they depend entirely upon certain industrial producers for their supplies. Scrap, for instance, is just an offal of the steel industry, and associations in the scrap trade cannot be expected to have any dominant hold over producers. On the North-East Coast the scrap trade has been well organised for recovering iron and steel scrap drawn from the large works with which they have special arrangements. They appear to have the advantage of dealing in large quantities in contrast to the "marine store dealers"; the grading of scrap—there are fifteen grades of steel scrap and a smaller number of grades of iron scrap—has assisted the movement towards association which, in this area, is represented by the National Federation of Iron, Steel and Metal Merchants.[2] Concentration in the industry was here a strong cause for the centralisation of the scrap trade; for some years the British Iron and Steel Corporation has acted as a central buyer of scrap and certain other similar materials.[3] When the war began the associative organisation of the scrap trade was hailed by trade journals as a very useful development towards centralising control.[4] But there were complaints that old-established independent merchant firms, which had been in the habit of tendering large supplies of scrap to the works needing it, had had their offers refused if they had not joined the National Federation of Iron and Steel Scrap Merchants.[5]

We have already drawn attention to the inherent tendency in new industries towards large units. The electrical manufacturing industry is an interesting example. According to the 1935 Census of Production, the size of the average establishment in this industry is more than double that of the older mechanical

[1] Cf. Report on Restraint of Trade, pp. 13–14.
[2] Cf. *The Metal Industry*, 12 Jan. 1940, p. 38.
[3] Cf. *Iron and Steel*, Jan. 1940, p. 131.
[4] Cf. *Iron and Steel*, loc. cit.
[5] Cf. *The Machinery Market*, 5 Jan. 1940, p. 20, ib., 12 Jan. 1940, p. 18.

engineering industry.[1] Furthermore, whereas in the mechanical engineering industry establishments with more than 1,500 workers represent no more than 19% of the total turnover, the electrical engineering industry with only 33 establishments of that size shows a remarkable diversification and is not nearly integrated enough to allow frictionless combination to be easily accomplished. In the manufacture of electrical machinery there are 162 establishments; 93 make radio apparatus; there are 31 establishments producing heating and cooking apparatus; there are only 17 making telegraph and telephone apparatus. In some branches of the industry, combination is very powerful; in others it hardly exists. The lamp industry and the cable industry are the most striking examples of concentration leading to combination.

The cable industry in England showed from the beginning a strong tendency towards the large unit, and was fully concentrated when in 1918 an Official Report declared that as regards other parts of the electrical industry "the tendency to concentration had made little advance in England" [2] in contrast to continental developments. In the manufacture of electric lamps standardisation was possible at an early date; trade-marked electric lamps could be produced at a uniform price. There were early opportunities for cartellisation, which soon extended into the international sphere; the first international lamp syndicate was formed in 1903, and after many vicissitudes an international lamp combine of world-wide scope was formed in the twenties, and an agreement was reached in 1931 for a period of not less than twenty-five years.[3] In this branch of the electrical industry conditions are very favourable to combination and association. The Cable Makers' Association controls almost the entire output of its industry; the cartel in the lamp trade, the Electric Lamp Manufacturers' Association, is not quite so fortunate, for certain important lamp-makers are outside it. Radio Manufacturers are organised in the Radio Manufacturers' Association, which, like the two other associations mentioned, fixes its own prices. The fourth association to be mentioned, the British Electric and Allied

[1] Cf. Final Report of the Census of Production, 1935, p. 304. It must be observed that the figures refer to "establishments" and not "firms"; the number of firms will of course be much smaller than that of establishments, because many firms have numbers of separate factories. However, the difference between the new and old industries is so marked in this case that it is clearly indicative of "firms" as well as "establishments".

[2] Cf. Report on Commercial and Industrial Policy after the War, 1918, p. 14.

[3] Cf. Hermann Levy, *Industrial Germany*, p. 100.

Manufacturing Association, is of a different type, the members fixing their prices individually.[1]

The essential point about the Electric Lamp Manufacturers' Association appears to be not that important firms have remained outside, but that in this industry there has always been a very high degree of industrial concentration. Most of the lamp business is concentrated in a few large firms, the General Electric (Osram—G.E.C. Lamp Works) controlling about 50% of the entire British demand. Three other leading producers—the British Thomson Houston Co., the Edison Swan Electric Co., and the Metropolitan Vickers Electric Co.—are all constituents of one corporation, Associated Electrical Industries.[2]

The Electric Lamp Manufacturers' Association has an agreed price list. Other branches, with less marked concentrative features, have to content themselves with what is called "the Fair Trading Policy", which is in fact a sequel to the failure to arrange agreed prices,[3] and is only a gentlemen's agreement, which shows clearly the discounts applicable to each type of purchaser. The discount increases if the dealer will "sign up"—i.e. undertake not to sell or display non-ring lamps. By signing up he also qualifies for an additional bonus, payable annually. The discount is also increased in the case of bigger dealers, though no higher bonus is granted. This discriminative system does not appear to have the universal approval of retail traders in the lamp business.[4] In radio manufacture, the most popular products are made by big firms, and there is also a tendency in the industry towards concentration.[5]

There is also an association in the manufacture and distribution of light fittings. This sector of the trade has always been considered, as one trade journal put it, to be "more open to abuse" than the manufacture of any other article in the industry. The Electric Light Fittings Association has apparently overcome these difficulties, and as the same journal observed, is now representa-

[1] But the Association is a party to the electrical fair trading policy. See for details, *Manchester Guardian Commercial*, 17 June, 1938.

[2] For a description of organisation in Germany and of international combination in the lamp trade, cf. Levy, loc. cit., pp. 74 sqq.

[3] It merely defines the several types of buyers such as the wholesaler and retailer and sets out maximum discounts which the signatories undertake to try to observe.

[4] Cf. *Electrical Trading and Radio Marketing*, Dec. 1940. A reader of the journal asks in a letter: Why did association manufacturers find it necessary to have two distinct rates of retail discount? Why is "a discount of 22%" allowed the "free retailer" and a discount of 27% "to a retailer who is prepared to confine the whole of his sales to a group of manufacturers"?

[5] Cf. *Manchester Guardian Commercial*, loc. cit., col. 3.

tive of the best " work of organisation " that has lately taken place. This association was the first to put the Fair Trading Policy into operation; it followed this up by supplying only through a recognised list of wholesalers, and it covers to-day " nearly every firm that matters ".[1] The latest associations in this field—the Domestic Electric Refrigerator Association—was formed in spring of 1940. Its " achievement " was to reduce guarantees from five years to one—another example of trade regulation outside the sphere of price regulation. It has made common arrangements for sales policies, discounts, guarantees and purchase facilities. The Electric Water Heater Manufacturing Association is another association in a similar field. It may be noted, however, that manufacturers of vacuum cleaners still lack a separate association, and the complaint is made that, as no two firms agree, the conditions vary so much that they are " one of the most bewildering things the dealer has to face ".[2]

The concentrative structure of the electrical industry, especially in some important branches, should offer a very definite stimulus to the linking of manufacturers' associations, trust-like concerns and cartels, with distributive trade associations. This has been less marked than might have been expected, for the distribution of its goods is highly localised and flows into several distinct channels. The first step to influence the distributive trade was therefore the application of the policy of price-fixing with definite discounts and bonuses, or the arrangement of a " Fair Trading Policy ". The next step, that of direct co-operation with retail trade associations, is complicated by the existence of many different types of distributive outlet.

The main distributive channel for domestic electrical equipment is the local electricity supply undertaking. According to the *Manchester Guardian Commercial*[3] there are 600 of them, with attractive showrooms, demonstrations of all kinds and other amenities for the buyer. There are about 3,000 shops selling electrical goods, and there are also many ironmongers who sell electrical goods of one type or another as part of a much wider stock range. Some 1,500 department stores sell electrical equipment, and about 1,000 co-operative stores. Radio products are increasingly sold by undertakings which are concerned primarily with leasing radio sets; the Central Equipment Limited, for instance, has, at present, 16 London depots and 5 depots in the North of England. Electrical contractors are significant dis-

[1] Cf. *Electrical Trading and Radio Marketing*, Jan. 1940, p. 27.
[2] Cf. *Electrical Trading*, March 1940, pp. 30, 37. [3] See loc. cit.

tributors. There are important chain-stores, such as that of J. & M. Stone in London and surrounding districts with some 26 branches.[1]

Despite this great variety and multiplicity of retail outlets, the trend has been towards distributive associations and towards linking manufacturers with such associations. This trend is, of course, most conspicuous in those branches in which concentration of manufacturers and association of dealers have gone farthest. The wholesalers are represented by the Electrical Wholesalers' Association, which remains active in spite of the fact that the supply undertakings are in many cases provided with goods directly from the manufacturers. Early in 1937 the Electrical Contractors' Association sponsored the National Association of Electrical Retailers, to take care of the retailing interests of its own members and of non-contractor dealers; there is the Ironmongers' Federated Association, which has an electrical section of its own. The two retail associations were rather hostile to each other. The ironmongers wished to put forward the opinion that there was no such thing as an "electrical dealer" proper, because of the diversity of distributive channels, and the other body suggested that the retail organisations should be unified by the I.F.A. dropping its electrical branch. Such competitive tendencies in association movements, however, generally end in an uniform agreement. On the radio side of retailing, the movement towards association has been very active. The interests of wholesalers are watched by the Radio Wholesalers' Federation. Catering for retailers are the National Association of Radio Retailers which, like the National Association of Electrical Retailers, is associated with the Electrical Contractors' Association and the Wireless Retailers' Association, the latter being in turn a member of the Radio and Television Traders' Federation. This shows how far the network of associative ramifications has already been spun. As the *Manchester Guardian* observes, "the radio trade tries to operate on strictly maintained prices, though 'cutting' breaks out intermittently". But the remarkable fact remains, that the associative and non-competitive organisation has here developed, although there are still vast numbers of retail traders. A census undertaken by one of the biggest manufacturers in the country showed not long ago that 83% of his sales were made through 4,000 dealers. Another manufacturer had 20,000 names on his mailing list. The Wireless Retailers' Association represents some 3,000 shops alone.

[1] According to the London Telephone Directory, May 1940.

The Radio and Television Traders' Federation was formed in 1937 as an organisation embracing five of the six major associations existing in the radio retail trade. The National Association of Radio Retailers is the only body which still stands aloof from the Federation, though it has many times been invited to join.[1] The wish to arrive at a still more closely knit collective organisation brought about a rather sensational scheme in the spring of 1940. It was generally called the "White List". As a trade journal explained:

> The White List is a trade control plan under which a representative number of reputable manufacturers on the one part, supply only to registered dealers. The dealers, on their part, agree only to stock and advertise apparatus selected from an agreed list of manufacturers.

The scheme was widely discussed in the trade journals. It was stated to have met with a most surprisingly good response. The White List was to be collectively controlled by 40 manufacturers of prominent position, such as among others Ace Radio, Phillipps, Marconiphone, Radio-Gramophones, A.C., Cossor, etc. The scheme, so it was said, had the "official approval" of the retail organisations. The link between the manufacturing and retailing interests seemed to have been found. The list covered trading in all types of complete commercial radio receivers, radio-gramophones, television sets, etc. Ten thousand dealers had joined soon after the beginning of propaganda for registration. Among the points to be carried through was that "Prices must be maintained". Co-operative societies would be supplied providing they would not allow dividends on the products sold. Manufacturers who usually distributed through wholesalers as a separate group were to impose an obligation on their distributors to confine their supplies to retailers on the registered list. But, after much acclamation, the trade was suddenly left without further definite news, and by May a journal was able to state that the scheme was "dead", for undisclosed reasons.[2] But, as with other schemes of this kind, one might say "si no vero e bene trovato". It was certainly appropriately designed to meet the "requirements" of the most important members of manufacture and trade, and there was no "logical" reason for its premature death.

The manufacture and distribution of electrical equipment has been discussed in some detail, for it is characteristic in many

[1] Cf. *Electrical Trading*, Jan. 1940.
[2] Cf. ib., May 1940, p. 29; also June number.

respects. It shows that manufacturers' associations flourish where the numbers of firms are small, and that in such associations, the important firms must be assumed to make the associations' strength. It further shows how widely an interlocking between such associations may be carried. Above all, it illustrates very clearly that, even with a great number of retail channels and retail traders, such manufacturers' associations are likely to lead to a more closely knit alliance between the two interests of manufacturing and retail distribution. In this case the impetus certainly came from the manufacturing side, and could never have been expected without the conditions of concentration there. The linking-up of both interests took different forms, as is shown in the case of the ironmongers on the one hand, and the attempt among radio-manufacturers to attract retailers by the White List, on the other. The tendency of interlocking between manufacturers' and retailers' associations has developed and seems to progress, despite the fact that there is a tremendous number of retailers and a wide variety of products and all sorts of different and not at all homogeneous distributive channels.

The "perfect" retail combine will exist where the ties between manufacturers' association and retailers' association are so close that both associations may be lodged under one single roof. Such combination exists in the motor-car industry, where the Motor Trade Association is governed by a Council consisting of 40 manufacturers or factors and 26 agents, and ensures price maintenance.[1] A similar organisation is to be found in the cycle and motor-cycle industry and trade.[2] Here we have on the one side the manufacturers' organisation, the British Cycle and Motor Cycle Manufacturers and Traders' Union. An "associate body" of this organisation is the Cycle Trade Union, which has the object of enforcing the resale prices attached to the proprietary products. But the combination is not yet perfect; it cannot be described as "complete" until amalgamation or agreement has been reached between the manufacturers and trade union and the National Association of Cycle and Motor Cycle Traders, which was created in 1938 from two former trade associations.

Another association in which manufacturers and distributors are linked together is the Stationers' Association of Great Britain and Ireland. This association [3] has three sections covering the interests of manufacturers, wholesalers and retailers respectively.

[1] Cf. Report on Restraint of Trade, p. 13.
[2] Cf. *Manchester Guardian Commercial*, 23 Sept. 1938.
[3] Cf. ib., 15 July 1938.

One of the primary purposes of the association is to secure a proper division of the field between these three interests. It has developed certain definitions of each business interest, the effect of which is to confine manufacturers to manufacturing and traders to trading in wholesale or retail. One of the main concerns of the association is to stop direct trading between manufacturers, wholesalers and the public—a problem particularly urgent in this group of business.

Another field of activity is price fixing and maintenance. But it must be remembered that the number of retail stationers who would fall under the definition of the Association is probably not more than 4,000, while, according to the *Manchester Guardian Commercial*, there are 45,000 retail newsagents, many of them handling stationery lines, and other retailers who do not fall under the association's scope. Furthermore, there are about 600 manufacturing stationers. Yet the association marks an interesting beginning of combination between manufacturers, wholesalers and retailers in one association.

We have noted before that the movement towards retail associations is in general strongest where there has been, in some way or other, a tendency towards the development of larger retail units or even of a nucleus of concentrative combination among them. The same experience applies to the problem of organising different already existing associations into one comprehensive body. Consider, for example, the Confectioners' trade; according to a statement of the President of its principal association there are 100–200 manufacturers, 5,000–6,000 wholesalers and as many as 250,000 retailers![1] Comprehensive organisation would appear, at first sight, to be faced with insuperable difficulties, but some consolidation is taking place among the retailers. A recent declaration of the President of the National Union of Retail Confectioners, that " the large retailer was an easier man and they had in their association the bulk of the principal retailers of most of the large towns of the country " bears out our contention about the significance of some concentration, even though the actual number of shops may be huge. In the President's branch at Sheffield, three men spoke for at least sixty retail shops. The large retailer, it was further stated, deals with the manufacturer, while the small man deals with the wholesaler. Negotiations with manufacturers seem to have been difficult, but it is interesting to see that the desire to link up the interests has been so keen that what might be considered as an intermediate organisation was

[1] Cf. *Confectionery Journal*, 3 April 1940.

proposed which would lead to a national organisation. Such a body would consist of a National Advisory Board, represented by the Manufacturing Confectioners' Alliance and the National Union of Retail Confectioners. Such a body would have to deal, so it was suggested, with the maintenance of standard selling prices for the manufacturers, wholesaler and retailer.[1] It was considered to be unfortunate that both associations (as also that of the wholesalers, the British Federation of Wholesale Confectioners) were located in different parts of the country, while complete unification of interests would be much furthered by "close permanent contact". Such local contact may be in many cases accidental before a comprehensive organisation is started, but it may become one of its features when it has taken effect.[2]

The *Manchester Guardian Commercial* reported in 1938 (18 November) that "the lack of unity in the jewellery trade" appears to be an obstacle to proper delimitation of the respective provinces of the manufacturing trade, such as those of the National Association of Goldsmiths, the London Wholesale Jewellers' Association, the Birmingham Jewellers and Silversmiths' Association, and the British Clock Manufacturers' Association; they are headed by the National Council of the Jewellery and Allied Trades' Associations. But the difficulty here lies in the fact that the producers are in many cases retailing to the public, a fact found out by the National Association of Goldsmiths at a British Industries Fair. The goods pass through many channels. They go to wholesalers and retailers, to manufacturers within the trade, factors within the trade, stores with and without a "distinct" jewellery department, Government bodies, export houses, "club" and such like organisations conducted outside established trade, "warehouses" offering "wholesale" or like inducements to the public, any other trading concern or individual outside the retail jewellery trade—and the public generally. Price-fixing associations are far off in this trade.

An example of unified organisation of manufacturers' and retailers' associations is the Proprietary Articles Trade Association,[3] which contrasts strongly with the grocers' proprietary articles trade in its linking of manufacturers' and retailers'

[1] Cf. *Confectionery Journal*, 3 April 1940, p. 117.

[2] One should be careful before generalising as regards the "large" number of outlets and its relation to trade association possibilities. Apart from the importance of an initial nucleus of bigger units, the exact type of outlet is very important.

[3] The example of the P.A.T.A. inspired the formation of the Grocers' Proprietary Articles Council.

interests ; it marks the beginning of the union of manufacturers' and grocers' interests in the pharmaceutical trade as well. The P.A.T.A. has a council comprising 12 representatives of manufacturers, 12 of wholesalers and 12 of retail chemists. There are quarterly meetings, sectional for each group, and joint meetings. An executive committee controls routine administration.[1]

The types of retail trade association described so far, indicate in general the scope of their organisational influence and activities, leading in most instances from mere retail trading deeply into the wholesale and manufacturing branches. It remains to be added that, as Henry Smith puts it,[2] " in the Chambers of Commerce of the larger town, with its departmentalised committees, local associations of greater or lesser stability and authority are frequently encountered." There are now 39 associations affiliated to the London Chamber of Commerce, with a total membership estimated at 50,000, having the right, as nominated members, of direct representation on the Council ".[3] Among them, so far as retailers are concerned, are the National Federation of Grocers' and Provision Dealers' Association, the Multiple Shop Federation and the Society of Motor Manufacturers and Traders, Ltd. The 1940 Report of the Chamber observes in this respect: " The authority with which the Chamber is able to speak on the numerous questions that come before it is, therefore, not measured by the numerical strength of its direct membership alone. . . . The wide range of interests covered by the affiliated associations . . . is indicative of the Chamber's increasingly representative character." The Chamber also provides office accommodation and secretarial assistance to some allied and also other trade associations. Whether such " representation " should be regarded as a complete, and thereby, satisfactory, representation of retail interests is open to doubt. Associations represent only a section of each trade group ; they do not represent those remaining outside, sometimes by far the largest number of individual traders ; a trade association of a special group may have a very strong position in retail trade in general, while another one, the trade of which might be interlocked with the former, may be in a weaker position and not be a nominated member of the Council. Such conditions should be kept in mind before

[1] Cf. *Manchester Guardian Commercial*, 1938, p. 210.

[2] Cf. Smith, loc. cit., p. 79.

[3] Cf. Fifty-Ninth Annual Report of the Council, the London Chamber of Commerce, 1941, p. 13 and Appendix A.

suggestions are made to use chambers of commerce as administrators in matters concerning retail trade economic policy and organisation.[1]

The National Chamber of Trade effects a *de facto* co-ordination of the activities of the local bodies. The following may serve as an example of the multiplicity of relationships affecting the scope of retail association; one particular Joint Committee of trade organisations comprises representatives of—

(1) The Retail Distributors' Association,
(2) The Drapers' Chamber of Trade,
(3) The National Association of Outfitters,
(4) The National Association of Credit Drapers,
(5) The National Federation of Ironmongers,
(6) The National Chamber of Trade, and
(7) The National Federation of Grocers and Provision Dealers' Associations.[2]

Contact between trade associations, councils or federations of trade associations, joint committees of different groups, is developing all the time. Its aim may not necessarily be connected primarily with any desire to start an associative price policy or to fortify trade practices with non-competitive objects. But it is in fact highly likely that further development of such co-ordinating efforts will lead in time to the further objectives which characterise to-day the great majority of retail trade associations.

When in 1940 a fight broke out between the manufacturers of "Kensitas" cigarettes and the National Union of Retail Tobacconists, the latter was supported in its attitude by associations in the confectionery, newspaper, hotel and restaurant trades.[3]

The American precedent should not be overlooked. The latest contribution to the subject, by Professor A. R. Burns, of Columbia University, summarises the development in the U.S.A. as follows: [4]

> trade associations claimed that their function was to contribute the knowledge and rationality that were essential to competition yet lacking in so many industries. But the association found that fuller information concerning methods of cost accounting, actual costs, prices, production shipments, and the like did not meet their needs. They were impelled to devise methods of replacing individual decisions concerning price and production policy (no matter how

[1] Such a suggestion was made in connection with the nucleus scheme by Sir George Schuster. Cf. H.C. Debate, 27 April 1941, col. 809.
[2] Cf. *Grocery*, Feb. 1940.
[3] Cf. *Tobacco*, 1 Jan. 1940, p. 71.
[4] Cf. A. R. Burns, *The Decline of Competition*, New York, 1936, pp. 7–45.

> broad their factual basis) by co-operative control . . . the policies of trade associations are . . . indicative of new forms of behaviour, which were becoming popular in industry at large, viz. price leadership, sharing the market, the stabilisation of prices, and the standardisation of products and of the non-price aspects of the sale of goods.

No doubt, *l'appétit vient en mangeant.* In the U.S.A., as it appears, trade associations must be careful to hide such further objects for fear of legal prosecution ; many such associations with a really " harmless " character were accused of being price-fixing or otherwise monopolist in character.[1] On the other hand, it may be appreciated that closer general relationship between retail trade associations of various groups is a justified aim. Towards the end of 1938 the formation of a general organisation for this purpose, i.e. to consult together on matters of common interest, was proposed. The new organisation was called the Retail Organisations Co-Ordinating Committee.[2]

The multiplicity of retail bodies which, directly or indirectly, may concern the single trader, is likely to create a singular sociological effect. The individual trader is involved nowadays in a complex of memberships which the layman would fail to understand. The fully " organised " retail chemist, for instance, is registered with the Pharmaceutical Society, and is a member of the National Pharmaceutical Union, with its associated body the Chemists' Defence Association, and, through the National Pharmaceutical Union, a member of the Proprietary Articles Trades' Association.[3] Many members of the National Federation of Newsagents, Booksellers and Stationers, and of the National Union of Retail Confectioners, some time ago joined the National Union of Retail Tobacconists. Some retailers were then paying three subscriptions and reconciling three loyalties.[4] This, one may observe, is a fair example of the individual trader's sociological make-up. And yet the ramifications do not even appear to have reached their limit.

The scope of organisation of retail trade associations covers a wide field. In some few cases such associations have an isolated existence, but normally they are linked with industrial organisations. But they are by no means mere adjuncts to industrial organisation of a quasi-monopolist character. They may become

[1] Cf. Benjamin S. Kirsh, *Trade Associations*, New York, 1928, pp. 149, 161 and *passim* ; also Levy, *The New Industrial System*, p. 168.

[2] Cf. Retail Distributors' Association, Report, 1938, p. 14.

[3] Cf. *Manchester Guardian Commercial*, 1938, p. 210.

[4] Cf. ib., 29 July 1938.

decisive influences upon the prosperity of industrial combinations, and an important means for attaining these combinations' ultimate aims. On the other hand, they may not come into being before a strong consolidation of interests has taken place among their manufacturing suppliers. Upon such factors depends in many cases whether the organisation of retailers or that of industrialists plays first fiddle in determining non-competitive price policy or trade practices. There are cases in which both interests, though organised, never meet. In others, contact is aimed at and provided by the retail trade. In others again, the step is very decisively taken by the manufacturing organisation to be formed. Examples of the effects of such varying conditions upon price and trade practice policy will be given later. In these respects the Tobacco Trade Association, for instance, contrasts with that of the proprietary articles trade, where the retailer has retained considerable authority. But conditions may also change. A retail trade interest, once split into thousands of competitive "defenceless" units, might become by their unified effort a mighty single factor with which the industrial combination must deal—the comprehensive organisation of re-sale demand might, after all, become a more powerful factor in price bargaining than the consolidation of producers. The contact may be effected in a different way. Looser or firmer agreements on the one hand may exist next to, or be superseded by, a real "community" of interests or even administration under one control. Such retail associations may be strongest where certain big interests form a nucleus, as in the trustification of industry; on the other hand, the interest of the big firms may be safeguarded only by the existence of a strong trade association. In industrial combination it is impossible to say whether the trust is a stronger form of organisation than the cartel; there are many examples in British industry which show that the formation of big amalgamations or trust-like concerns did not do away with the necessity for them to seek further strength by agreements with other cartelised firms; [1] the cartel, indeed, may in many cases become the corner-stone of trust supremacy.[2] When J. and P. Coats formed their powerful combination they were able to effect this by absorbing only five of their most important rivals; by doing so this combine acquired the vast bulk of the trade. Yet the immediate result was the

[1] Cf. Levy, *The New Industrial System*, pp. 176 sqq., where specific examples of both developments are given.
[2] Cf. Levy, loc. cit.; also *Monopolies, Cartels and Trusts*, 2nd ed., 1927, pp. 242–6.

separate combination of twenty outside firms—forming the English Sewing Cotton Company—and an intensive war between the two interests would have become inevitable had not an "agreement" been concluded to the effect that the two combines would not interfere with each other's business. The early development of cartelisation in the British salt industry shows in the same direction.[1] The same experience of reciprocal effect between trust and cartel may be observed in Germany's industrial organisation: [2]

> Amalgamations develop within the cartel, in fact in many cases are accelerated by it, while, when once in progress, trust-like organisations may find it very useful to retain the advantages of associative combination offered by cartelisation in their relations to the remaining outsiders or new competitors.

It seems clear from our description of the scope of retail trade associations that powerful single units, big firms and financially strong undertakings in general play an outstanding part in the formation of trade associations and that they are the leading nucleus for expansive developments. Here again, as our further description will amplify, a double effect might be observed; the big undertaking is prominent in promoting the formation of trade associations, and when these associations are formed they may not only further protect the big firms within their sphere, but also become the driving force in closing the ranks and in reinforcing the monopolist position of the association. Such differences must be remembered when regard is paid to the different conditions under which the formation of trade associations may actually develop. The outstanding trend of the development appears to be the widening of the scope of the trade associations into a close contact with industrial combination, with some reciprocal action. The deeper causes of this combination of hitherto divergent interests will be analysed in the next chapters. The ever-closer co-operation between the two spheres of association opens entirely novel aspects of British economic organisation.

NOTE

To complete the matter it may be added that sometimes the formation of retail trade associations is attempted outside the sphere of the leading or dominant association in the trade. An association may thus be followed by a counter-association of some of the remaining independent

[1] Cf. Levy, loc. cit.; also *Monopolies, Cartels and Trusts*, 2nd. ed., 1927, pp. 242–6.
[2] Cf. Levy, *Industrial Germany*, 1935, p. 227.

traders. This development has not had any real significance in this country. But it is of some interest to note that here and there some sporadic attempt at such counter-action has been made. An Independent Tobacco Trade Association was formed in 1933, but it cannot be said to have any decisive influence in the trade to-day. A National Drug and Toilet Goods Association was formed in 1937 with the object of meeting the quasi-monopolist tendencies of the P.A.T.A. This Association fell into decline early in 1940. There is—as with the counter-organisation of cartels—the constant possibility that, after all, independent organisations will fall into line with the principal trade association. This happened with the National Cash Grocers' Association, formed in 1937, which had only a membership of 100, of which the overwhelming majority became after some time members of the Grocers' Federation. It cannot be said that the attempts to fight association by association has yet proved successful.

PART II

THE NEW COMPETITION

CHAPTER 6

THE STRUCTURE OF RETAIL COMPETITION

It is easy to open a shop, but hard to keep it open.
CHINESE PROVERB.

THE connection, rapidly growing closer, between industrial combinations—dominant concerns or manufacturers' associations—and retail trade associations, must be viewed on the background of the change which the structure of production and distribution has been undergoing. The small self-producing shopkeeper is dying out. The importance of the small shoemaker, the small confectioner, the small tailor, even the small baker and the small butcher, has been greatly reduced. It is still true that there are 500,000 retail shops in England and Wales, and some 575,000 in Great Britain, and that the "small independent retailer is still by far the most important of the various channels of distribution".[1] But most writers dealing with such figures tend to overlook the fact that the "number" of small retail shops is not characteristic of their problem, just as, for instance, in agriculture the number of smallholdings does not mean much if a comparative figure of their productive value is omitted.[2] The independent small farmer may be a national and social asset, but nevertheless his economic value to agriculture and the nation can be measured only by comparing the acreage he occupies with the total acreage under cultivation and the value of the food he produces with the total produced or required.[3] A middle-sized farmer may in that respect, and even more in

[1] Cf. Neal, loc. cit., p. 5; also Harold Macmillan, *The Middle Way*, 1938, pp. 75–7.
[2] Such, and other, sociological aspects of retail distribution have not been treated in *Trial Census of Distribution in Six Towns*, 1937 (International Chamber of Commerce).
[3] No such attempt is made in Viscount Astor and B. Seebohm Rowntree, *British Agriculture*, 1939, under "Smallholders".

regard to certain branches of production, surpass the achievements and, thereby, the national "economic" significance of a considerable number of smallholders.

Small shop statistics should be treated in precisely the same way; in numbers alone, the small retailer may indeed be the "most important" distributive channel, but as regards the value of the products sold by him the position may be entirely different. In the pharmaceutical trade, for instance, a recent census disclosed the existence in retail pharmacy of 13,400 privately owned shops, 2,600 multiple shops and 421 co-operative shops. The first group's annual turnover was £14,500,000; the second's £11,000,000; the third's £1,500,000.[1] There were thus five times as many private shops as multiple shops, but their turnover was only about one-third more. Admittedly retail pharmacy is one of the most highly concentrated parts of retail distribution, some 20% of the retail outlets being members of one of the big combines. But in the meat trade some 11% are multiple shops, in the grocery trade 9%, and in the boot and shoe trade again 19%:[2] the economic importance of the small private shop must not be deduced from numbers but from the aggregate turnover, and when this is done the picture may be very different.

The word "independent" is also misleading in another way when applied merely numerically to the small retailers. In agriculture the small farmer retained his independence; he has remained a producer and seller of his surplus production. The retail shops, still so large in number, have undergone a revolutionary change; they have lost much of their independence as producers; in fact, they produce no longer. The great majority of them are no more than intermediaries between the final consumer and the manufacturer. Those who do still produce for themselves can no longer be regarded as contributing a considerable share of the nation's demand in their line of goods; their production is certainly only a small proportion of the national turnover in the respective commodities. Even where the line is not clearly drawn (as in the case of small retailers combining some productive service with their trade) this observation still applies. The teashops selling home-made cakes and chocolates are rapidly disappearing and acquiring more or less the appearance of "antiques"; the "Olde Worlde Tea Shoppe" will

[1] Cf. *Pharmaceutical Journal*, 13 April 1940; figures taken from Part I of "Census of Pharmaceutical Business" published by Pharmaceutical Society of Great Britain, quoted ib.

[2] Cf. Henry Smith, loc. cit., p. 53.

probably supply factory-made biscuits and chocolates. Robert Sinclair, in *Metropolitan Man*, says that

> the small shopkeeper is in some ways a curious survival. . . . Amalgamations remove the shopkeeper but seldom the shop . . . the octopus, in time, will leave only the whelk-stall to the owner-trader.[1]

What he had in mind, apart from the intrusion of big concerns into retailing, was the disappearance of the " Hans Sachs " type of independent producer-retailer. In industrial Germany the process [2] of the supersession of the small producing retailer has created many conflicts and has largely influenced the formation of *Mittelstandsparteien*—middle-class parties. Artisans succeeded in securing by these means *Mittelstandsgesetzgebung*, i.e. legislation to secure their particular corporative aims, such as registration, regulations regarding apprentices and journeymen, examinations, " the master title " and the so-called " little " *Befaehigungsnachweis*, i.e. the requirement of certain qualifications before permit is given to instruct and employ apprentices. The " middle class movement " started a direct campaign against department stores, which led in some States of the German Empire to special taxation of the latter.[3] The causes of the absence of a definite " middle class " policy in England have been, to some extent, admirably revealed by C. F. G. Masterman, *The Condition of England*, see ed. 1910, p. 64, in the chapter, " The Suburbans " : " They have none of those channels of communication in their possession by which the rich and the poor are able to express their hostility to any political or social change." But the fact that the middle classes in Germany, led by the artisan-retailer, had such political organisation has been responsible for a great part of that economic and political reactionary and romantic trend on which Hitler was able to build part of his programme.

Dissociation of the small producer from retailing and the development of the non-producing retailer into the representative

[1] Cf. Robert Sinclair, *Metropolitan Man*, 1937, p. 55.

[2] Described early by Werner Sombart in his *Der Moderne Kapitalismus*, 1902, with a great amount of documentary detail

[3] Cf. for *Mittelstandsbewegung* as compared with English conditions, where such a movement was absent, Hermann Levy, *Soziologische Studien ueber das Englische Volk*, Jena, 1920, p. 6 sqq. ; also G. Brodnitz, *Betriebskonzentration und Kleinbetrieb in der englischen Industrie*, Conrads Jahrbuecher, 1909 : " An artisan's movement and an artisan's legislation is unknown in England."

of the so-called "independent retailer" resulted in a fundamental change of the price problem which now confronted both the retailer and the manufacturer. The retailer was no longer concerned with calculating "costs" of production, for he produced no longer; he was concerned solely with the question of the "margin" or the discount, i.e. of the difference between the "price" of the commodity to him and the price he could charge his customer for it.

This does not mean that all retailing has necessarily become dependent upon the economic and financial strength of the producer. Retailers have been able to enlarge their units; once this concentration has been carried through, the new retailing unit becomes a factor to be reckoned with by any sensible manufacturer. Its clientèle becomes sought after, its custom perhaps a commercial privilege. An important trade paper, discussing the position of Marks and Spencer, stresses the fact that "perhaps the most conspicuous advantage of a large organisation such as chain stores is its ability to develop an independent buying policy", and proceeds:

> Marks and Spencer . . . tell the manufacturer what they want and the manufacturer may as a result contract to sell a million pairs of stockings to the firm. The stockings are then "tested on the counter" and the results communicated to the manufacturer. The firm need not therefore be the passive recipient of what manufacturers offer. It can initiate and create. Success or failure in a fixed-price chain depends entirely on the bold and imaginative policy with exceptional powers of organisation.[1]

Retailers of this modern type may, in fact, force themselves into a position in which manufacturers are dependent upon them, rather than the reverse.

There is a second consideration which strengthens the retailer's potential position. Individual manufacturers cannot easily win the retailer's custom. They will generally seek to do so by combination, and if this is successfully carried out their bargaining power *vis-à-vis* the retailer is greatly strengthened. But even if the manufacturer is a member of a price-fixing association he cannot compel retail traders to take his goods. Some will prefer his goods, others those of his associates. Competition of a kind remains although general price levels are fixed; the single small retailer remains on the defensive, but he retains his freedom of choice; he is not entirely under the hammer of the other party. Even writers like Neal, with a strong predisposition to

[1] Cf. *Store*, Nov. 1938, pp. 67–8.

see the retail trade unified and reduced in numbers, cannot get away from the fact that this development is actually far from reality. He observes that "the small independent shop" is "still . . . the numerically strongest class"; the state of affairs foreseen by Neal, when "the field for the small independent dealer will be more and more confined to merchandise where the element of fashion or individuality is of distinct moment", seems a long way off.[1] In 1931 there were still 92,700 grocery and provision shops in England and Wales, 78,500 doing general and mixed business, 49,400 meat shops, 14,300 tobacco shops, 74,000 textile and other clothing shops, 28,900 shops dealing in paper, stationery, books and periodicals, 12,000 ironmongers, 10,100 drug shops and chemists, 12,000 in the boot and shoe trade, 31,500 in the sugar confectionery group. These figures are in some respects misleading: they simply measure, as Henry Smith points out,[2] the unit of operation—i.e. the separate shop building—and not the unit of organisation, which as we have seen may be a giant multiple. But, as Smith, who has carefully investigated the subject, also remarks, it must be realised that these figures cover the very many large shops to be found in the centre of all cities; it then "becomes clear that a high proportion of shops in all trades must be of the smallest possible size".

Manufacturers, whatever their combinative efforts may have been, must view the problem of distribution from this angle. Where such conditions exist, it is impossible to reach a situation in which the total orders of combined manufacturers are allocated according to planned quotas to single retailers; such detailed planning of retail distribution might ultimately be practicable if the whole field of manufacture and retailing were exclusively covered by large-scale enterprises, just as the supply of, say, steel is planned right to the consumer. But as long as present conditions continue, manufacturers' attention must inevitably be concentrated upon the problem of capturing the retailing outlets in competition with other manufacturers, even though there may be general agreement about general price levels and certain trading conditions. They may try to achieve the object by adopting such practices as granting bonuses and rebates on a tempting scale, or by gradually stepping up the retailer's profit margin. Such attempts may soon come to an end, for they force other leading manufacturers to take counter-measures, and even if this eventually ends in the formation of a general combine, the fight

[1] Cf. Neal, loc. cit., pp. 172–3.
[2] Cf. loc. cit., pp. 36–7.

for the retail markets still continues, just as has happened in the British tobacco trade.[1] This being the situation, the manufacturer, in spite of all combination among his own ranks, is consistently confronted by the need to devise new methods of securing for himself his necessary retailing customers.

[1] See p. 31; this precise process took place there. Yet, strong as combination in the tobacco manufacturing and retail business is to-day, it has not prevented the rise of an important outsider offering cheaper attractions; the competition between this firm (J. Wix & Sons, Birmingham, offering "Kensitas") and the National Union of Retail Tobacconists, supported by other leading associations (National Union of Confectioners, National Federation of Newsagents, National Federation of Off-Licence Holders, the Hotels and Restaurants Association, and the Retail Distributors' Association) in respect of retail markets (cf. for details *Tobacco*, 1 Jan. 1940, p. 71, ib. 1 Feb. 1940, p. 93, and 1 March 1940, p. 52) has lately led to controversies and fights not dissimilar from those in the beginning of the combination movement in the tobacco trade. It was argued by the anti-Wix organisation that there were "too many tobacco units", and the London N.U.R.T. urged "dearer licenses to prevent flooding" (see *Tobacco*, 1 March 1940 p. 55). The matter proves that the fight for retail markets has not ceased even in a manufacture so highly combined as in tobacco. Terms as regards settlement discounts, quantity rebates and bonuses are far from being uniform in the trade, although constant attempts are made to stabilise the situation by the N.U.R.T. Prices Committee. The N.U.R.T. realises, as a journal put it, "that its members can assist in obtaining better terms on all lines by displaying and pressing lines on which the approved terms are already available" (cf. *Manchester Guardian Commercial*, 28 July 1938).

CHAPTER 7

BRANDED GOODS

The Monopolist and the Patentee did joyne hand in hand as here you see.

Title page of *The Projectors' Downfall*, London, 1642 (British Museum).

IN order to hold their retail markets, manufacturers have always been in search of means of creating for their goods some reputation-value, apart from cheapness or quality. The small shopkeeper cannot be expected to create such value, and indeed he could not necessarily be trusted to create it even if he were able, for by particular bonuses or rebates he might be induced by other competitors to stock their wares. Patents ensure to their industrial exploiters the position of monopolist strength which may appear to them as the most desirable goal. But it remains a curious fact that the monopoly by patents plays a much less important part than might have been expected when modern industrial progress began, although it is still accepted by many economists as one of the fundamental conditions which to-day make for industrial monopoly.[1] Patents are not as important creators of monopoly as one might theoretically imagine. Neither the motor-car, nor the radio, nor the electric lamp, nor other new inventions which one might expect to lead (by their distinctive technical features) to a monopolist position, have secured any freedom from competition to their manufacturers by virtue of patents alone. The electric lamp is a particularly good illustration of this ; its history is much less one of monopolist domination of a certain patented product than one of struggle between various lamp patents.[2] Patents in one line of industry seldom remain alone ; improvements and new inventions undermine the monopolist importance of existing patents almost everywhere. The manufacturer who wishes to exploit the mass demand of modern retail markets cannot rely upon the mere legal protection

[1] Cf., for instance, Prof. L. Robbins, *The Great Depression*, 1934, p. 189.

[2] Cf. the excellent description by W. Meinhardt, *Die Entwicklung der Gluehlampenindustrie*, Berlin, 1932, pp. 11–15 and *passim* ; also a short summary of it in Levy, *The New Industrial System*, pp. 140–1.

of a patented article, quite apart from the fact that such a possibility exists only in the minority of cases. He must broaden the sphere of patented goods into a field where the quasi-monopolist feature is not made up by legal rights but by the reputation and goodwill which his article gains. For this he cannot use the services of the retailer, except in cases where the retailer has become representative of a very large amount of the demand, as for instance in the case of chain stores. But generally the manufacturer finds it necessary to approach the consumer directly, and so to create for himself a reliable mass market of the "unknown" customer. If this end is achieved the relationship between manufacturer and retailer may be reversed; it is the manufacturer who by controlling this article of reputation has gained the upper hand.

The modern manufacturer has thus for a long time tried to create for certain of his goods a quasi-monopolist value which merely results from the exclusive attention paid to his articles by the consumer. This leads to the desire to create, or to impress the public by the creation of, an entirely "new" article, similar in kind to others and yet distinctive by certain features of either quality or cheapness or handiness or effectiveness. The "patent" idea looms behind it, and the trade mark is in many cases used as an auxiliary expedient. When the development of industry and technical progress began early in the seventeenth century, and when industrial capitalism began to encroach upon the traditional organisation of industrial guilds, it was a favourite device of monopolists to pretend that owing to their production of an entirely new article which they wanted to substitute for others, or to traditional methods of production, they should be privileged with a patent monopoly. Such a patent, for instance, was granted by James II to some courtiers who "swore" that they would produce better and cheaper soap than others in London; on the strength of that argument they got a patent which enabled them to oust from their trade the old-established London soapmakers and even to prohibit soap-making in private. They formed a monopolist organisation, "The Society of Soapmakers of Westminster", and "upon the pretence of a Project and New Invention, which in truth was not so" became one of the most unpopular monopolies of the period (to quote the expression of a pamphlet published in 1641).[1] It is interesting to note how early it entered the consideration of enterprising

[1] For details and sources, cf. Hermann Levy, *Monopolies, Cartels and Trusts in British Industry*, 1927, pp. 34 sqq.

capitalists that the competition of a traditional trade might be successfully met by putting forward an entirely " new " product, fitted out with new qualities, and appealing to general interests.[1] It sometimes seemed easier to monopolise the trade, hitherto exercised by guild-masters, by setting up the manufacture of an entirely new " brand " than by the system of crowding-out the existing artisans. The modern manufacturer is frequently led to the same conclusion, although he is no longer in the position to exploit a privilege. But if he can succeed in establishing a commodity which he claims is " the best on the market " or for which he succeeds in soliciting a particular appreciation by the public, he may become free from the competition of many commodities which previously dominated consumption, although technically his article is not an original one at all. It is this conception which has replaced the patented article by an even more powerful one—the article which is bought by the masses on mass-suggestion in the firm conviction of its particular, outstanding qualities, in price or in effectiveness. Under such circumstances the first aim of the manufacturer will be not to capture the retailer, but to capture the retailer's customers.

In this respect it is interesting to mention the case of proprietary medicines which are so largely built up by clever and persuasive advertisement. Many of these are inferior products which are simply imitations or casual mixtures, but there remains a wide field in which the genuinely good and effective proprietary branded article differs intrinsically in no way from the former unbranded medicine. In a Report recently published by the International Labour Office " the prescription of proprietary articles of quasi-scientific value in the place of effective and less costly standard medicaments " is expressly mentioned as a means of cheapening health insurance administration.[2] In the same Report the National Formulary of the British Medical Association is quoted as giving a list of proprietary preparations sold under trade names with substitutes of reputed therapeutic effect. For instance:

Example

Prescribe:
    Emuls. Petrol. c.
    Phenolphthalein et Agar, N.F.
and not: Agarol

[1] The soap projectors claimed among other points that they would make soap entirely from native material and not from imported potash.

[2] Cf. I.L.O., *Economical Administration of Health Insurance Benefits*, Geneva, 1938, p. 93.

In the same manner the Memorandum on Prescribing (Scotland) mentions that Paraff. Moll. Flav. at a penny an ounce may be prescribed and not Vaseline, which costs twopence an ounce. The Memorandum adds:

> Unnecessarily high cost can be caused also by the use of certain proprietary medicines which in spite of quasi-scientific claims made for them can be replaced by equally pure, effective and much less costly medicaments.

The Memorandum further declares:

> It has been contended that equivalent preparations do not possess therapeutic value equal to that of the advertised proprietary articles. This contention, however, is not substantiated by the medical profession generally.[1]

The effect of advertisement cannot be better illustrated, although it must be borne in mind that, even if the consumer did know that the value of the ingredients of the proprietary medicine or article was relatively small in comparison with the price of the article, he might give a preference to the branded goods in view of the package, the flavour or the container. But the case certainly illustrates the commercial openings of the proprietary commodity.

The direct outcome of this development has been that the wholesaler has in many sales become an obsolete figure. This was fully confirmed by the evidence taken by the Committee on Restraint of Trade.[2] Where the wholesaler trades in branded or fixed-price goods he has

> no opportunities . . . of performing what are sometimes regarded as the distinctive functions of a merchant, that is to say of buying supplies in a cheap market and selling them in a dear market.

But there are cases where the price at which the wholesaler sells a branded article to the retailer is not prescribed, but is settled by competition among wholesalers, and with regard also to the price at which the retailer could obtain his supplies direct from the manufacturers. The smaller retailers often find it advantageous (having regard to prices and other considerations) to buy from a wholesaler, while the larger retailers may buy direct. But on the whole the wholesaler may to-day be regarded as trading on a fixed price margin; this being so, his interest is no longer focused on the price level, although he remains primarily

[1] Cf. I.L.O. Report, loc. cit., pp. 228–33.
[2] Cf. loc. cit., pp. 16–17.

interested in the prosperity of the retailer, which may depend to some extent upon the prices which are being paid. The modern large-scale manufacturer builds up the distribution of his goods, so far as he does it for himself, by creating outward signs or identification marks for his goods.[1] Where the small artisan-retailer sold to his local customer, such signs were not needed, except that he wished by some mark to perpetuate his personal relationship to the goods produced. The customer, before buying, could taste, feel, or test. The reputation of the local artisan and dealer was a further guarantee of the quality of the article bought or ordered to be made. Modern conditions of distribution to the unknown customer have brought the change. Professor Plant [2] stresses the fact that the purpose of "branding" was that the manufacturer wished to expand the market for his product, but it should not be overlooked that the demand came from the customer's side as well. Not knowing the manufacturer, and having no personal guarantee of the quality of the goods offered, the customer naturally wished to have such qualities marked in some way or other as an indication of the "real" value of the article.[3]

The two sides of the matter should be everywhere clearly discerned. Reputation does not depend on branded goods alone, with their general characteristic of uniform packing and fixed price, mostly indicated on the article itself. Professor Plant points out that

> many manufacturers expand their business and flourish by supplying goods without any identification mark of any description to traders and manufacturers. They prosper by maintaining quality and service, while quoting competitive prices.

But the fact remains that the most successful producers for the most part do have "brands". On the other hand, once the system became popular there was every reason for less reputable producers to adopt it in order to push their wares. This has created a very grave problem, which has been present in the drug and proprietary articles trade since the beginning, and gave rise to early investigations by the British Medical Association, which under the sensational title of *Secret Remedies* attracted nation-

[1] For this, the word "brand", signifying originally "burning" (*brinn-an*, German: *ein-brennen*), is appropriate.

[2] Cf. *Some Modern Business Problems: A Series of Studies*. Prof. Arnold Plant, *The Distribution of Proprietary Articles*, 1937, pp. 303 sqq.

[3] The labels on wine bottles may be regarded as precedents, demanded just as much by the consuming connoisseur as by the producer's desire to secure or expand his market.

wide attention. It was the first time that a courageous attempt had been made to disclose how far advertisement was used to create a reputation for proprietary goods which in no way contained the qualities or the effectiveness claimed by the makers.[1] We are not immediately concerned here with these aspects of branded goods, which have nothing to do with the commercial principle upon which "brands" are properly based, and which are merely abuses which should be dealt with either by the legislative and legal authorities, as fraud, or by the medical profession and public health authorities, as a menace to the nation's health, as well as by those trade associations which are concerned with the moral standards of their members. Nor are we immediately concerned with the possibility that liberal advertisement may establish a branded article which does not justify the claims made for it and is not worth the price asked for it. From our point of view, concerned with retail trade associations and their influence on competition, this matter of branded goods is highly pertinent, not in regard to abuses and frauds, but in relation to the economic conditions thereby created by producers, and their influence upon the structure and organisation of the distributive trades. If a manufacturer should succeed in providing demand for a branded article by any fraudulent or unjustified means, from the point of view of this investigation he falls in precisely the same category as those others who succeed in raising the value of their articles by means of branding *above the price level* which might be achieved without it; it is the economic system which interests us, not the moral factor.

From this *economic* point of view, the important fact is that manufacturers try to create for certain of their commodities by branding what Professor Plant has rightly called "consumer insistence".[2] It is this "consumer insistence" which is intended to create the quasi-monopoly value of the brand. Sometimes the line between "right" and "wrong" runs so fine that distinction becomes difficult. It has been the policy of certain manufacturers to create a fear complex to arouse the public to buy their articles; people might be persuaded that if they did not immediately and persistently take certain branded drugs every little cold would develop into the most serious illness. The

[1] Cf. *More Secret Remedies*, B.M.A., 1912. Under "Proprietary Medicines", cf. f. i, p. vi: ". . . there are nostrums put forward with the greatest assurance for even the most serious disorders, and in many cases the same article is asserted to be a cure for almost every disease to which the human body is liable".

[2] Cf. Plant, loc. cit., pp. 304–5.

creation of fear might lead to a detestable practice in life insurance canvassing; yet it is a common practice for agents to be recommended by well-meaning advisers to rely upon the creation of such fear for selling life-insurance policies to the poorer classes,[1] and nobody observing in some of H.M. Inspectors' Annual Reports the great stress which is laid on the fact that every little scratch ought to be iodised in time could pretend that creation of fear on the part of the vendors of certain disinfectants must be always a damnable exaggeration. Who is to decide where the creation of a fear complex really oversteps the bounds of truth and reality? The facts alone can be decisive; therefore in many cases it will depend entirely upon the degree of persuasion. This question of morality, indeed, is not entirely a matter of principle, and it cannot enter into an analysis of the general economics of branded goods.

This confusion of economics with morality may easily lead to misunderstandings. The economics of the branded article—which have yet to be written—should not be derived, as is frequently the case, from the examples of some quacks who may adopt a system of blatant advertisement and exaggerated promises. The economics of the branded article conform fundamentally with the necessities of modern mass distribution in general. It has always been the aim of every large manufacturer to sell huge quantities of goods of uniform quality at a fixed or, if this is not possible, at a fairly stable price. Even agricultural producers have sometimes by co-operative action built up their business on this principle with remarkable success. The Danish farmers have defeated many of their competitors by producing and exporting butter by this system. The branded egg, bearing its mark of freshness, is now well known in most countries. In overseas countries apples are far more "fabricated" than "grown" in irregular shapes and quantities as they are by old-fashioned European farmers. As soon as such "fabrication" of a uniform article of fruit became possible, the "branded" article appeared. Since branding has been introduced in the sectors of economic production which are in general most reluctant to adopt industrial methods, it is hardly surprising that in industry proper it has become a generally accepted aim. Large quantities of standardised goods can be sold most effectively if they can be graded

[1] Cf. Sir Arnold Wilson and Prof. Hermann Levy, *Industrial Assurance*, 1937, pp. 175 sqq., p. 176; L. G. Horsefield, *Practical Methods in Industrial Assurance*, London, 1933, p. 25: "Once the need is fully understood and feared the necessary premium for security becomes comparatively unimportant."

and packed and distributed in uniform containers, packages, and wrappings—and these give the opportunity for branding. Once the position of the retailer was weakened, and producers sought direct access to the consumer, branded goods became the most convenient and effective means of doing it. By their packing or wrapping they could impress the buyer with their utility, uniqueness, and, possibly, "fairness" of price. The branded article offers the prospect of comprehensive propaganda campaigns direct to the public. This confirms Professor Plant's view that many manufacturers expand their business, and flourish, by supplying goods without identification mark of any description to traders or manufacturers. They prosper by maintaining quality and service while quoting competitive prices.[1] But this certainly does not dispose of the fact that an increasing number of manufacturers see a promising prospect in the branded article and that they are constantly alert to discover new methods for exploiting it. If other manufacturers do not follow this trend it remains an open question, yet to be investigated, how far they are either unable to create brands (for not every article can be sold in given quantities or measurements, packed or wrapped—textile goods, for instance, as clothing material, silk, ribbons, etc.) and how far they are not interested in creating a direct contact with the public eliminating the active role of wholesalers or the retail trade.

Branded goods are frequently welcomed by the retail trade. Among the elements of "good buying" explained by a writer on groceries in a quite recent book is mentioned

> novel packing, as where the container can be utilised in the household when the jar or box is emptied. Any container which would keep the contents perfectly dry for a long time, or which would in any way contribute to the elimination of all waste, would constitute a good sales point.

He further draws attention to "good appearance of the package from a display point of view—making it sell 'on sight'".[2] But this is only one point which makes the branded article an advantage to the retailer. It also saves an enormous amount of time which would otherwise be spent on getting the goods from somewhere in the shop—sometimes a neighbouring store-room or cellar—of weighing or sampling them and wrapping them for the customer. Storage is easier, safer and possibly less expensive. Even the shopkeeper whose goods are not perishable must beware of his stock failing to sell. Practically every description of

[1] Cf. Plant, loc. cit., pp. 303 sqq.
[2] Cf. C. J. Elliot, *The Retail Grocery Trade*, 1938, pp. 188–9.

merchandise is subject to some form of depreciation,[1] but with branded goods the risk is probably the smallest. If a retailer is forced to liquidate his stock, he can much more easily dispose of fixed-price branded goods than loose unbranded quantities. The same applies to department stores and fixed-price chain stores. It would be unthinkable for the stationery department of a chain store to sell writing paper, foolscap, pens, clips, and so on, otherwise than in fixed quantities, whilst the small old-fashioned retailer may still sell them in any small amounts which may be wanted. Such forms of packing are the backbone of the fixed-price chain store. Sometimes the problem of presenting articles in the desired shape of package in conjunction with the low price limit may present some difficulties; but these difficulties are rarely unsurmountable.[2]

Sometimes modern methods of packing with all their revolutionising effects upon retail trade are the outcome of some technical invention which is not connected with any idea of influencing retail sale methods by particular ways of packing. The invention of tinned goods was certainly not made for that particular purpose; the particular form of a new container was merely accidental to the desire to revolutionise the methods of preserving food.[3] In biscuit making, as early as the 1830's Jonathan Dodgson Carr invented the machines which brought in their train of mass production the novelty of packing in tins.[4] Sometimes, however, the impetus to create a new packing may come directly from the consumer's side. It has been claimed by F. W. Woolworth & Co. that the selling of certain medical articles, such as for instance iodine in threepenny bottles, was definitely to the advantage of the masses of consumers in poorer districts.[5] The sales advantages of branded goods nowadays finds expression in most of the textbooks devoted to the education and guidance of retailers.

> If goods are presented in a convenient and attractive form a great deal is done towards making a good impression upon the purchaser,

[1] Cf. Cunliffe L. Bolling, *Sales Management*, 1927, p. 229 and *passim*.

[2] The great variety of goods which the fixed-price chain store is able to offer is illustrated by the fact that the Woolworth organisation in America sells no less than 10,000 different lines of goods (cf. Neal, loc. cit., p. 51).

[3] But the particular form of the container gave the name of "canned" goods in the U.S.A. in contrast to the English "preserved" or "tinned"; cf. E. H. Taylor, *The Story of Preserved Foods*, Newcastle, 1922; T. H. Collins, *The Story of Canned Goods*, New York, 1924; Hermann Levy, "Economic Terminology", in *Politica*, Aug. 1934, pp. 170–1.

[4] This was also one of those revolutionary innovations which were at first restricted to the originator; cf. Rees, Vol. II, pp. 286–8.

[5] Cf. Report of Select Committee on Stamp Duties, 1937, pp. 161 sqq.

and there is also the important advantage that suitable and secure packing protects the goods from damage by exposure or shop soiling. Furthermore, it must be remembered that in the common event of competitive goods being laid side by side upon a counter for the customer's inspection, the most attractively packed goods will have a great advantage.[1]

So much for the advantages of branded articles on the retailer's side. " Advantages " of a more doubtful character, such as the provision of certain " gratuities " by the manufacturer, may be here omitted, as they do not concern our point.[2] It should be the fully justified aim of trade associations to wipe out such kind of " unfair competition " ; this bears no relation to the general economic advantages of branded goods to retailers with which we have been concerned so far. From the consumer's point of view, many of the advantages mentioned before as pertaining to the retailer's interest are also immediately those of the final consumer. For many reasons he may prefer properly packed goods to loose buying. He may prefer this as a matter of cleanliness and from hygienic reasons for which there is an increasing and legitimate appreciation.[3] The housewife may also be inclined to favour packages of fixed size as a measurement of weekly or monthly consumption ; she may prefer to keep her goods in tins and other containers rather than in china or glass pots which take more room in the modern kitchen, and which appear to be losing favour almost as fast as the cigarette-case is outstripped by the package itself. But the most important point on the part of the consumer's demand for branded goods is certainly the feeling of greater certainty and security of the quality and efficiency of the merchandise bought. The contact with the local retailer has in many cases become a looser one, and so the " personal " assurance which the latter used to give, or which was tacitly connected with his personal standing and reputation, had to be replaced by something else when purchases were made away from home, here or there ; this applied especially to casual purchases in big stores. The brand became the new expression of assurance. It laid the foundation for the modern confidence of

[1] Cf. Cunliffe L. Bolling, *Sales Management*, a complete guide to modern methods of marketing, advertising, selling and distribution, London, 1927, pp. 141–2.

[2] Cf. for instance, Rees, loc. cit., pp. 302–3 : " One often comes across the shop-window full of all sorts of cheapest and showiest domestic articles, items of wearing apparel and what not. On investigation it will be found to be the depot of a present-giving tea company. . . . However, this class of business has not had a very far-reaching effect on the legitimate grocer."

[3] We have already mentioned that preference is given to hygienic butchers.

the purchaser when buying commodities which he could neither try nor test before use. This applies in particular to articles for which a guarantee is given; the branded article means, more or less, a direct relationship between the consumer and the producer. Where the retailer is held responsible by the customer for certain promised qualities of an article, not being nowadays the producer he is generally not in a position to comply with the legitimate complaints of a customer otherwise than by referring the matter back to the factory or its agent. If there is no particular guarantee there may be endless disputes between the customer and the retailer over a matter which, after all, will not be settled to the former's satisfaction. It is here that the definite guarantee often attached to the branded article becomes important; this guarantee refers the customer directly to the original producer; it may enable him to deal directly with the latter, only mentioning a certain number of make or sending in a slip added to the branded article. The customer reads with a feeling of assurance such labels or slips as the following (taken from a typewriter ribbon):

GUARANTEE

> We guarantee that each and every article we manufacture is exactly as described. We guarantee that any X.... article purchased will satisfy you and that it represents full value for the price you pay. The service we offer does not only consist in supplying you with the High Quality you desire but includes also efficient and courteous attention.

In many cases the retailer, when asked to take back or exchange an article which has been evidently unsatisfactory, thinks of nothing else than his loss, which he might not be able to recover; the powerful manufacturer of the branded article does not much mind such casual losses and inconvenience—they are of small importance to him. He thinks in the first place of the reputation of his article and is willing to indemnify the disappointed purchaser if there is good reason. Thus the interests of the small retailer and of the customer meet. In referring the customer's complaint back to the manufacturer the retailer saves trouble and cost; he shifts his responsibility to the right source; he does not risk deterring the customer from further purchases even of the same article.

The popularity of the branded article is thus built upon a great number of reasons, all of which can be traced back to the fundamentals of modern retail trade. The branded article

remains the product of modern mass distribution and the desire of the producers to sell huge quantities of standardised quality to an army of unknown buyers. This entirely modern aim of industrial producers has eclipsed the old-fashioned retailing system, and has created as its counterpart the modern consumer with his rationalised habits of consumption, faced with the necessity of buying commodities with unknown qualities from unknown producers and unknown retailers, and thus demanding a mark of assurance replacing his own (and the retailer's) judgment in each individual purchase. It is not accidental that in the U.S.A., where the modern structure of mass distribution on the basis of standardisation has made the greatest progress, under the guidance of the U.S.A. Department of Commerce and the U.S.A. Chamber of Commerce trade associations have been encouraged to eliminate competition to the extent of introducing standardisation.[1] The rationalised habits of the consumer influence the retail trade on a wide field, and the scope of this influence has been constantly enlarging its frontiers.[2]

[1] Cf. H. A. Marquand, *The Dynamics of Industrial Combination*, 1930, p. 166.

[2] Standardisation has caused a revolution in the catering business, not only in the bigger towns but also in their immediate surroundings. The success of the "chain store" restaurants offers an illustration. The customer knows on entering one of such restaurants just what food he can obtain, the service that will be given with it, and the prices that will be charged. It may be that he is not particularly attracted by the service, or he may be able to afford more expensive meals, but if he is in a strange district he will go to the multiple restaurant rather than make an experiment with an independent catering house or tea-shop. (Cf. Bolling, loc. cit., p. 232.) The branded fare or menu does not distinguish itself from other commodities drawn into the line of modern consumption, and hardly anybody will deny that compared with the former habit (still prevalent in high-life restaurants of France) of presenting the bill of fare without even indicating the prices of the different dishes it represents a social progress.

CHAPTER 8

ADVERTISING AND QUASI-MONOPOLY

Business to-day consists in persuading crowds.
GERALD STANLEY LEE, *Crowds*, Bk. II, c. 5.

The foundation of advertising is the branding of merchandise, for it is impossible to create a demand for an article without clearly defining it.
CUNLIFFE L. BOLLING, in *Sales Management*.

THE branded article would never have reached its modern predominance if manufacturers had not been able to develop and use the modern technique of advertising. The beginnings of modern advertisement, though from the start coupled with mass sales, were rather rudimentary. When Sir Thomas Lipton began to think " in millions " he sent a procession of fifty drays accompanied by bands and pipers through the streets of Glasgow advertising his first purchase of 20,000 chests of tea.[1] Another pioneer of the branded article recognised at an early date the value of advertising his brand, when he decided to employ more largely the vegetable oils obtained from the tropical regions of the world and to brand them with the inviting name of " Sunlight Soap ". Perhaps the most remarkable and effective poster of modern times (as contrasted with the more pictorial taste of Pears' Soap) was that of " Why does a woman look older sooner than a man ? " This was the second step towards " branding " ; the first having been merely to sell the soap in pieces to the retailer, thus relieving him of the trouble of having the " bars " cut by his assistants and weighed into pounds and half-pounds. From this point soap became a branded proprietary article. Was it accidental that concurrently with this novel creation of consumers' mass appreciation for an article of daily use the first important British trustification appeared on the scene, the first huge concern controlling plants and distribution not only in Britain, but also in Germany, Belgium, Switzerland, U.S.A., Canada and New South Wales ? [2] Was it accidental that con-

[1] Cf. Rees, Vol. II, pp. 246–7.
[2] Cf. for details Rees, loc. cit., pp. 280–3 ; Levers are believed to control about 90% of the whole output of household soap in England. Cf. Levy, *Monopolies*, etc., p. 276 ; also P. Fitzgerald, *Industrial Combination in England*, 1927, pp. 59–71.

currently with the creation of one of the first branded articles of this kind, with a quasi-monopoly value backed up constantly by advertising on an unprecedented scale, the formation of a retail trade federation was proposed by its founder as early as 1891? Here indeed we have all the elements of the new development—from the loose article to the branded one, produced with all the means of technical rationalisation by a dominant concern of a trust-like character, distributed on the background of vast advertising schemes as an article for the millions, even in an international sphere, and protected at an early date by associative retail trade organisation.

In the U.S.A., with its pronounced unification of demand due to the high price of labour, the exclusion of imports by tariffs and the consequent necessity of technical rationalisation and standardisation of production, the branded article and the advertisement, of it has reached a climax. Advertising there is sometimes defined as "printed salesmanship". The "reach" for customers assumes the most sensational forms.[1] Once the customer has become the standardised, uniform product of such advertising, he has also become the ideal receiver for mass distribution on a large scale on the "branded-article" pattern. His "acceptance" or "insistence" demand may be more powerful and useful to the producer and his retailers than any patent or trade mark would be able to guarantee. It is not based upon patent right, but on the definite attitude and wish of the consumer.[2]

Economists who are apt to overrate the importance of patents should remember that, if all patents were abolished or drastically curtailed, this regulation of the manufactured consumer's mind by advertisement would remain, and would psychologically constitute a more powerful restraint of "free will" than any legal privilege of producers or retailers. The 300,000 billboards within the jurisdiction of some 9,000 American cities alone, or the 2,000,000 car cards which adorn 60,000 street cars in the U.S.A. may give an illustration of the machinery set in motion to influence the buyer's mind.[3]

In Britain the vast amount of money spent yearly on advertisements by businesses mainly interested in branded goods is best illustrated by some figures relating to proprietary articles' dis-

[1] Cf. Kenneth Goode, *Manual of Modern Advertising*, London, N.D. (printed in U.S.A.), pp. 13, 18 and 115 sqq.

[2] "What grocer could do without his consignments of Reading (Huntley and Palmer's) biscuits?" Cf. Rees, loc. cit., Vol. II, p. 289.

[3] Cf. Goode, loc. cit., pp. 381 and 385.

tribution, and in particular to proprietary medicines.[1] The Memorandum submitted by the Proprietary Articles Association of Great Britain to the Committee on Stamp Duties stated that in 1936 the advertisement of those quoted in the *Statistical Review* amounted to about £2,500,000 a year. That was for newspaper or press advertising only (including magazines) and did not include posters or show cards in any form. A witness before the Committee observed that, roughly speaking, one might assume that altogether the amount spent in advertising would amount to about 20% of the value of the sale.[2] Advertisements of food manufacturers have enormously added to the scope of branded goods advertising; recently, owing to the increasing public knowledge of the importance of vitamins, food manufacturers, partly in response to public demand, have taken to advertising foods as " rich in vitamins " and others to increasing the vitamin content of food by artificial means.[3] This conforms to the long-standing practice of creating new brands by adding substances to the article which might appeal to the public's demand for greater safety, cleanliness or hygiene.[4]

Advertising is costly, and although it will ultimately be borne by the retailers or their customers it means a heavy outlay for the manufacturer. The idea is so evident that those concerned with the interests of the retailer are most eager to recommend to him some ways to follow the line of the big producer—just as at one time it was believed that smallholders could and should imitate the methods of the larger farmers employing machinery. Something might certainly be done by co-operation—as the example of the Motor Show (see page 42) shows. But as a writer rightly remarks: " The foundation of advertising is the branding of merchandise, for it is impossible to create a demand for an article without clearly defining it." [5] The retailer cannot offer such branded goods of his own, and while it may be agreed with C. J. Elliott that " many will say, ' But I have nothing to advertise,' " his retort, " If this is so they *must* find something," appears to be more justified by theory than by practical possi-

[1] The test of whether a medicine is proprietary or non-proprietary should be whether or not the method of manufacture or the name under which it is sold is private property; cf. Report of Select Committee on Stamp Duties, 1937, p. 51.

[2] Cf. Committee on Stamp Duties, p. 76.

[3] Cf. P.E.P. Report on *The British Health Services*, 1937, p. 55.

[4] Obvious illustrations of this are the addition of " tar " to soap and of filter tips to cigarettes.

[5] Cf. Bolling, loc. cit., p. 137.

bilities.[1] And again, his query, " If advertising does not pay, then why do so many firms keep on advertising ? " shows little understanding of the structural differences between modern manufacturer-distributors and the big-sized department stores on the one hand and the small shopkeeper on the other. The planning of the advertisement of branded goods must remain the prerogative of manufacturers and wholesalers. At the Advertising and Marketing Exhibition at Olympia in 1933 " Packeteria " demonstrated how far this planning may actually be extended; but this " shop of the future " was in itself an advertisement for advertising branded goods. It did not help the shopkeeper to find methods of advertising the individuality of his shop, and hardly any such possibilities have been discovered.[2] Advertising remains at present the domain of the large enterprise, and it has created for those who are able to practise it a quasi-monopoly for their goods. It is very doubtful whether " retail advertising ", if actually carried out, would pay its way for the local distributor. It is not the local customer who has made advertisement pay, but the millions of local customers approached direct by the manufacturer. The Law of Large Numbers as expounded by statistical science is operative; viewed from behind the retailer's counter the single local customer appears as an amalgam of many individual desires, to which it seems hard to conform; viewed from the office of the mass-producing undertaking, his desires are just the same as others' and can be easily satisfied by standardised production. The customer, indeed, appears here as a being with little variety of taste. It is to this that the manufacturer turns his attention; if mass-acceptance of the manufacturer's goods is not likely, the manufacturer will make no attempt to satisfy the consumer's requirements. This does not necessarily mean, of course, that the retailer might not enlarge his influence over the customer by proper advertisement. But it is probably true that as regards the retail trade competitive advertising may be advantageously replaced by co-operative publicity—the advertisement carried out by a trade association or the collective advertising of a number of individual trades.[3] The slogan and advertisement " Say it with Flowers " or the " Eat more Fruit " campaign have certainly had results by no means to the retailer's

[1] C. J. Elliott, *The Retail Grocery Trade*, 1938, p. 237.
[2] Cf. an interesting chapter on " Planning Advertising to the Retail Trader " in Gilbert Russell, *Planning Advertisements*. 1935, pp. 134–42.
[3] Cf. Bolling, loc. cit., p. 151.

disadvantage.[1] Nevertheless, such campaigns' results can hardly be compared with the aims and effects of manufacturers' advertisements of branded goods.

Advertising by big firms appears at first sight to be one of the most conspicuous means of modern individual competition. Every poster we see and every advertisement we read seems to be designed not only to focus and concentrate our attention on its particular claims, but also to distract our appreciation from others. Expressions like " is the best ", or " and no other ", or " the only reliable ", or " the leading " are the customary companions of good slogans and catching phrases. But competition in this field, as in others, has lately created a reaction, and development in the U.S.A. shows that advertising agencies are aiming at restriction of unlimited freedom of advertisement by associative action. It is perfectly conceivable that ultimately the regulation of advertisement by the firms concerned, in order to check cutthroat competition, may become as important a factor in trade association policy as price regulation. Such organisation depends both upon the agencies and upon the advertisers themselves. In the U.S.A. the advertising agencies are extremely powerful. Apart from the general agencies, there are many specialist agencies—Associated Motion Pictures Advertisers, Window Display Advertising Association, Paper Makers' Advertising Club, Agricultural Publishers' Association, International Alliance of Bill Posters and Billers for the United States and Canada, Theatre Advertising Publishers' Association, and a great many others. Most of the groups are united in the Advertising Commission of the International Advertising Association. Publishers, their agents and the advertising managers form the members of those associations as well as of their vast centralised agglomeration. A large number of advertising agencies of one sort or another help to spend annually about $2,000,000,000 of advertising money, mostly by newspapers, direct mail and magazines, devoted " to actuating in some degree a $58,000,000,000 of business turnover " in normal years, as Goode observes. There are " advertising " managers of concerns that buy advertising ; there are publishers, broadcasters and other owners of advertising media, who sell advertising ; there are advertising agencies

[1] Cf. Sinclair, loc. cit., p. 56, and *Manchester Guardian Commercial*, 20 Jan. 1938. A very lucid description of this technique of advertising is given in *Marketing Organisation and Technique*, edited by Jane McKee (University of Toronto Press, 1940, pp. 83 sqq.). The critical note is not missing : The ultimate in absurdity was reached when a milk firm advertised " Drink more milk to keep your hair ".

who both buy and sell.[1] "The Four A's", the American Association of Advertising Agencies, comprises alone 200 members; it serves 6,000 advertisers spending alone some $250,000,000. They face the Association of National Advertisers, made up only of professional buyers, and with some 400 members. The single buyer of advertisement, the manufacturer and business man, has had the advantage of the improvement in methods of outdoor advertising and in the general quality of the modern poster. On the other hand, the Association has initiated a rigid standardisation of the various sorts of "bulletin" sold for poster display; the classifications include such as "City Bulletins Deluxe, choicest location, often 'landscaped' with sod and shrubbery", Highway or Boulevard Bulletins, Railway Bulletins Deluxe, and the plain "Store Bulletins" attached to walls. The posters which adorn these boards have been themselves standardised in certain sizes. That is one side of the associative effort. The other rests with those who have to "buy" advertisement, mainly the big concerns. Evidently they must come to terms with the associated sellers, and the beginnings of such associative action between the buyers' and the sellers' associations are found in an agreement about a joint code of ethics between the most important combine of associations on both sides—the "Four A's" and the Association of National Advertisers. This code contains among others a statement of trade practices which have been found by a joint committee to be unfair to the public and to discredit advertising, and among such practices are noted: "price claims that are misleading", "pseudo-scientific advertising", "misleading exaggerations", and others which are by no means limited to the conditions of advertising in America. Such restrictions are no less effective than price regulation. They may mean in many cases that a manufacturer may be prevented from selling commodities which under other conditions he might have sold by "high pressure" advertising. Nobody will minimise the most wholesome effect of such associative action. It may be more effective than any legal restriction. But it means in the purely economic sense a sharp limitation of actual advertising competition, and it may be doubted whether the power thus acquired by a combination of buyers and sellers of advertising will invariably be exercised with the sole object of preventing dangerous excesses.

In Britain matters have not yet developed so far, but the

[1] We follow here the most instructive description by Kenneth Goode, loc. cit., pp. 381–2, 397–400, 407 sqq. and 169.

American example may in some respects prove useful when the time comes to review the problems involved in the advertisement of quasi-monopoly goods. Advertisements will remain one of the bases upon which the sale and distribution of branded goods is built up. Advertisements will therefore remain an important factor in relation to trade associations' price policy, for branded goods represent the main field of price-maintenance in the retailers' business.[1] The whole problem of advertisement and of branded goods generally is thus irrevocably bound up with that of price-maintenance.

[1] Cf. Report on Restraint of Trade, p. 7. Here it is said that one-sixth of the goods stocked by an ordinary grocer "might be branded goods not subject to price restrictions, one-third price-maintained branded goods". It may be assumed, however, that conditions vary considerably in the different branches of retail trade; sometimes, as in the druggists' trade, the percentage of branded price-maintained articles would be higher.

PART III

PRICE POLICY

CHAPTER 9

THE BASIS OF PRICE FIXING

Either from indolence, or from carelessness, or because people think it fine to pay and ask no question, three-fourths of those who can afford it give much higher prices than necessary for the things they consume; while the poor often do the same from ignorance and defect of judgment, want of time for searching and making inquiry and not infrequently from coercion, open or disguised.

JOHN STUART MILL.

IN the days of John Stuart Mill the problem of cheap or expensive retail buying and selling was to some extent dependent upon the consumer's attitude, his knowledge of the number of outlets which might serve his wants, his shyness about choosing a less expensive article, his adherence to certain traders by reason of loyalty or conservative habits or simply the wish to show consideration to the local and neighbouring dealer. Small shopkeepers lived and depended upon such custom, and it cannot be denied that it still plays a certain part among the smallest retailers. It cannot be doubted that even in these days of change in retailing the personal contact which the small-scale retailer is able to maintain with his customers may sometimes constitute "an immense advantage over his larger competitors".[1] But where the system of branded goods with either fixed prices or at least fixed margins, regulated by the manufacturers or their trade associations, exists, this elasticity of price conditions ceases. A rigid system of price uniformity and price control takes its place.

Most trade associations in Britain are concerned with some sort of price-fixing or price-maintenance. A reciprocal action may be observed: the development towards uniform articles, produced by big manufacturers and sold in bulk to large retailers, packed

[1] Cf. for this view Neal, loc. cit., p. 8; also Bolling, loc. cit., p. 228: ". . . to meet the needs of different classes of consumers, a number of different classes of retailers exist, each one of which can be distinguished by its policy in regard to the question of price and service."

and branded, constitutes one of the most fundamental conditions for the formation of retail trade associations. It has been stated before the Committee on Restraint of Trade that this development may go so far that it stimulates " large " retailers to exert pressure upon manufacturers to compel them virtually to treat goods as price-maintained where in fact they are not, and to withhold the supplies from retailers who sell such goods at prices considered to be unduly low.[1] It may also happen that the retail price of unbranded or bulk goods may be maintained by the supplier. This, so the Report on Restraint of Trade explained, holds where by reason of his own position or through agreement with other suppliers he is able to exert economic pressure upon his retail customers. One such instance—which must not be regarded as being very prevalent—was reported to the Committee: it related to attempts made by the millers of South Wales to assist bakers generally to prevent other bakers from selling bread (except over the counter) at prices lower than the maximum prices recommended. But certainly the tendency towards the formation of trade associations is much more marked when a trade has developed certain series of branded and price-fixed commodities; large and dominant firms then arise, and they take the lead in the associative movement. Once this movement has been successful and the trade association firmly established, one of its avowed objects is generally to draft a policy of price-maintenance, by direct or indirect means, which will further enhance the position of its powerful members. The reciprocal effect is not unlike that in the development of industrial cartels: the existence of relatively few large manufacturing concerns may be instrumental in forming the cartel; the cartel, once formed, may improve the quasi-monopolist position of its most powerful members.

The Report on Restraint of Trade laid stress on the point that there are two aspects of the activities of retail trade combinations in their influence upon prices:

> One is the operation of an effectual boycott against persons who, in breach of their contracts or otherwise, sell at cut prices. The other is the possibility of a ring to raise prices against the public.

This distinction appears to be sophistic, to say the least of it. It is quite evident that trade practices to maintain prices—such as stop lists and boycotting—must be distinguished from price-fixation or price-maintenance as such by the setting-up of maximum or minimum prices or enforcing the prices of branded goods.

[1] Cf. Report on Restraint of Trade, pp. 7–8.

Legally the Report may also be justified in declaring that the Committee regards boycotting of members "who have broken their contracts or who have otherwise engaged in price-cutting" as affording no ground for interference. But this very example shows to what a *cul-de-sac* an investigation may lead if it is limited solely to the legal aspect of the case, when in fact the problem viewed from a general angle is a synthesis of many elements which cannot be singled out and treated as if they had no relation to each other. Only a very one-sided sort of survey can emanate from such limitations; the Report on Restraint of Trade, which might have been a landmark, merely proved to be a milestone on a very tortuous road. The Report appeared to be satisfied that the second possibility envisaged—the formation of rings by retailers—had not been attempted, and that no "monopoly" had been created. So it could dispose of any anxiety the public might have felt about both "dangers". As a matter of fact no present-day investigator of the problem is actually concerned with "monopoly". It is the deviation from competition, by whatever larger or smaller degrees, that matters. Retailers nowadays will be very careful not to form a "ring" against the public in the popular sense of the word. Such an attempt would soon be parried by all means of publicity and political influence and would inevitably recoil against those who started it. Such attempts have been rare in modern history. Apart from some of the "corners" in the commodity exchanges of the world, they have been almost non-existent; where they have been tried they have soon broken down. It is simply tilting against windmills to speak seriously of their possibilities or to draw any conclusions from their absence. What is of profound importance, on the other hand, is the continuous, general and successful attempt by trade associations to institute a price policy definitely aimed at *limiting competition and thereby constituting quasi-monopoly.* Whether such quasi-monopoly may be of a "dangerous" extent, whether it should be regarded as harmless or even useful, is a matter for the legislator to decide, and this involves very difficult and controversial decisions. But as a matter of principle what is important is that, under such conditions, prices are no longer regulated by an unrestricted play of demand and supply, but by a regulation of supply with the object of limiting the free movement of price levels. If this view is taken, there is not the slightest reason to distinguish between an action devised to prevent the cutting of prices which have been fixed or maintained by an association of retailers, or of producers, or of both, and "a ring

to raise prices ". The fixed price when considered against the background of prices moving up and down in free play, is just the same economic phenomenon as that raised by a ring. It is irrelevant to the principle of the matter whether a trade association declares its policy to be the maintenance of prices as fixed by itself, or as individually fixed by its members as in the case of most branded articles, or whether a certain number of traders form, without much formality, a " ring " on some market with the definite purpose of raising prices. The difference is none other than that of *lucrum cessans* against *damnum emergens*. In the one case the consumer is expected to pay more than he paid before, and to do so under the concentrated action of sellers. In the other case, the consumer might well reflect whether he would not have had the possibility of paying less if there had been no fixed prices and no price-maintenance by trade associations. The only difference, indeed, as regards the consumer's interest, remains that in the former case he might be forced to incur higher expense than before, while in the latter he might save money if prices were not fixed.

The problem of retail prices and trade associations consists to-day mainly in the regulation of margins. By such margins we do not mean the difference between the cost of production of the commodity and the price to be received for it; such margin will enter the calculation of trade associations only in those relatively rare cases (see page 34) where the retailer is still the producer, or where, as in the associations of undertakers, he offers a distinct service entering the cost of the " product " he sells.[1] The undertaker is a retailer concerned with a margin either consisting of the difference between his own cost of production and services and the price charged to his customer, or of the difference between the services he buys and the prices he charges for their resale. But such conditions are, of course, exceptional. As a rule the margins with which members of trade associations are concerned are those which result from the price they have to pay and that which they are required to charge for the resale. These margin problems are the centre of trade associations' price policy. Where such distinct margin does not exist, where the

[1] The National Association of Funeral Directors (London Area) issues (not published) an elaborate " Public Price List " which gives the minimum prices at which members are expected to offer funeral arrangements (exclusive of cemetery fees); a separate " Trade Price List " shows the prices to be charged between members for services rendered, for the undertaking may be one which hires hearses from other undertakers (i.e. carriage masters). Cf. for further details Wilson and Levy, *Burial Reform and Funeral Costs*, 1938, p. 155.

article is not branded, or where no price is prescribed to the retailer, either by price list or otherwise, price policy as a direct function of the trade association does not arise. This is demonstrated by experience. Price-maintenance in the drapery trade, for example, is limited to branded goods, but resale prices are not fixed by manufacturers even for all branded goods, although the tendency towards branding continues. There is a steady trend towards fixing retail prices for branded goods in the drapery trade, but as far as fashion goods are concerned it is practically impossible to fix resale prices, for such goods may be repriced more than once while in the possession of the retailer as the season advances. A writer observes:

> This throws up an interesting feature of the drapery trade and emphasises its seasonal character, in that it is practically the only trade which holds regular " sales ".[1]

Things might be different if it were possible to produce and sell price-fixed branded men's and women's wear; then the need for keeping up a definite margin by a strict price policy on the part of the associations would soon arise. We may be gratified that the development of standardising our tastes has not yet reached this point. The variety of goods offered and expected by the public still remains stupendous, much to the credit of British industry, and it is certainly this fact and not the number of retail outlets in the drapery trade, which is also very considerable, which impedes a policy of strict price regulation.

In the meat trade price lists, as they existed on the Smithfield Market in London, were sometimes criticised because they actually prevented some shops from selling as cheaply as they might wish.[2] Here, too, variety in some form or other may play an important part. Sometimes the fact is stressed that a retail butcher requires somewhat higher qualifications than a dealer handling dry goods in a branded form, because the profitability of his business depends so much upon the skill with which he can cut and dispose of all the meat which comes into his shop. Margins of 25–30% of selling price may normally be realised by the independent butcher (see pages 34–36), although this factor of skill means that there is considerable variation between individual butchers' margins.[3] The scope for fixed margins is thus limited, so no attempt has been made by retail butchers' associations to institute price-fixing. This is the case although there is strong

[1] *Manchester Guardian Commercial*, 12 Aug. 1938.
[2] Cf. First Report of the Royal Commission on Food Prices, 1925, p. 32.
[3] Cf. *Manchester Guardian Commercial*, 11 Nov. 1938.

concentration in the meat-importing business, and a marked tendency towards associations, wholesale and retail, represented by the National Federation of Meat Traders' Associations for retailers, and the National Federation of Fresh Meat Wholesalers and the British Association of Meat Wholesalers, whilst the big concern in the Argentine meat business, the British and Argentine Meat Co. Ltd.–Union Cold Storage Limited, is associated with a chain of some 2,000 retail shops.

The tobacco trade is probably the most striking example of price regulation; other trades emphasise with some envy that the reason is not far to seek: "the manufacturers (of cigarettes) have taken a strong line of action in having all their goods code-marked."[1] The main object of the Tobacco Trade Association is to maintain prices on branded lines at the levels fixed by the manufacturers, and we shall see later how this is done. The furniture trade is at the other end of the scale; it "is only slightly concerned with the question of price-maintenance, for only a small number of makers supply branded furniture with fixed retail prices".[2] The gross profit is here a fluctuating factor, not only as between one dealer and another, but even as between separate items in the stock of one dealer. To fix margins, not only must prices first of all be fixed, but the possible and justifiable margins must also show some sort of uniformity. In the furniture retail trade a high gross margin does not mean a high net profit; particular circumstances in this trade must be considered, such as the slow return on investment, the costs of delivery, the unequal distribution of business over the year and so forth.

In the stationery and fancy goods trade we find that despite many difficulties a protected list has been achieved. This list covers only branded goods or otherwise identifiable stationery items in respect of which manufacturers, wholesalers and retailers, through the Stationers' Association of Great Britain and Ireland, have agreed to observe fixed retail prices.[3] A Protected List has been drawn up for this purpose. The stationery and fancy goods trade is not yet far advanced in price-maintenance, but it is noteworthy that all its efforts in the direction of price-fixing have been in the trade in branded or similar articles. The same may be said of the ironmonger's trade; ironmongers feel that price-maintenance is the "outstanding need", and the National Federa-

[1] Cf. *Grocery*, Feb. 1940, p. 47.
[2] Cf. *Manchester Guardian Commercial*, 1 July 1938.
[3] Cf. ib., 15 July 1938.

tion of Ironmongers considers that as one of its main tasks, but they "realise that it can only be effective with branded lines ".[1]

One of the earliest branded goods was the book. Its history [2] amply confirms our contention that the branded article is the foundation of trade associations' price policy. The purpose of the early associations in this trade (as we have shown) was to fix the margin between the publisher's price and the price to the public. The standard margin, fixed by the publishers at the end of the eighteenth century, was wilfully attacked by James Lackington, who sold remainders at half-price in defiance of trade usage. After a century of struggles in which booksellers' and publishers' associations came and went, the "Net Book" agreement was reached; and this definitely regulated the question of discounts. The problem which confronted the publishers was not entirely solved; Lackington's idea found a survival in publications which, like Penguin and Pelican books, at first reprinted the original in cheap and attractive little volumes; besides this, the book clubs made their appearance. The Penguin type of publication, from the point of view of margins, was nothing else than the reappearance of the "remainder" under another cloak. Lackington had found it profitable to save remainders from being destroyed; he was able to find marginal buyers if he understepped the listed prices. The sixpenny books appeal to the same public; by the end of December 1938 some 200 Penguin and Pelican sixpennies had been issued in three years and had sold not less than 40,000 and 150,000 copies in the first year of publication.[3] Lackington's policy has once again asserted itself. Other publishers had other views. They had also envisaged cheap editions from time to time, but as Mr. Harold Raymond once put it,

> The stability of our trade and a reasonable remuneration for author, publisher and bookseller can only be preserved by maintaining a fairly high initial price for general literature, and avoiding too rapid and too steep a reduction in price in a subsequent cheap edition.[4]

The hint *re* the bookseller's discount is evident; even with a very large turnover of sixpennies booksellers' interest may be

[1] Cf. *Manchester Guardian Commercial*, 22 July 1938.

[2] See pp. 9–15.

[3] Cf. a very interesting little book by Margaret Cole, *Books and the People*, Hogarth Press, 1938, *passim*.

[4] Cf. Harold Raymond, *Publishing and Bookselling*, 1938; also the very instructive article, "Cheap Books", in the *Economist*, 3 Dec. 1938, p. 469.

centred rather on a high discount for a smaller sale of high-priced volumes. The *Economist* quite rightly remarked that

> the present practice of pricing books and reprints is founded on the view that demand for books is inelastic: that the possible purchasers or purchases of books at any price are strictly limited.

The publishers have relied upon the fact that a certain type of book is saleable at a certain price (mostly 7*s.* 6*d.*), and they have not risked testing the marginal elasticity of the market by very cheap editions. Their interest has been concentrated rather on the question of the margin to be conceded to the bookseller and on strict price-maintenance as arranged under the Net Book Agreement, though open-minded publishers like Mr. Stanley Unwin declared that booksellers, after the settlement of the disputed problems, should now look forward to increased sales "rather than to increased discounts" for increased profits.[1] Market risks—very great in this trade—had to be considered, so the price of books was not standardised nor the discounts fixed. The discount is calculated according to complicated scales, varying between publisher and publisher, but it is generally 25% of the "net" published price which the public must pay, and in rare cases it may go up to $33\frac{1}{3}$%.[2]

The sixpenny was the first branded book with a fixed *and* uniform price. It was severely attacked by publishers who contended that such "remaindering" benefited from their own previous work—the same idea as was behind the fight against James Lackington. But in the meantime the sixpennies had given life to a great many original publications, and so scotched the argument altogether. The publishers learned their lesson; in the summer of 1940 a group called the British Publishers' Guild was formed and now publishes sixpenny, ninepenny and shilling books through a common co-operative organisation, the Book Centre Limited, which works on a nation-wide basis and on rationalised principles.[3] There can be no doubt that the discounts for the bookseller are at least "reasonably high".[4] If there is still discontent the trouble must be sought in the lack of an appropriate consumption of books. The sixpennies have certainly widened consumption greatly, and it may well be that

[1] Cf. Stanley Unwin, *The Truth about Publishing*, 1926, p. 189.

[2] Cf. *Economist*, 7 Aug. 1937.

[3] Cf. for details the *Bookseller*, 22 Aug. 1940. The first members of the guild were Cape, Cassell, Chatto & Windus, Collins, Dent, Faber, Heinemann, Harrap and Murray.

[4] Cf. *Manchester Guardian Commercial*, 24 June 1938.

booksellers' aggregate profits will be increased in the long run. The development illustrates our particular argument clearly—that the one-price standardised article becomes possible only where there is mass demand. The "Guild" represents a still stronger position than the Publishers' Association and the Associated Booksellers, for it has under its control a one-price branded book (called the "Guild Book"), combining in its commercial features the regulated margin (now uniform) with the fixed price. The problem of price regulation, by margin or otherwise, will always remain dependent upon the circumstances just exemplified by the book trade's experience.

The "success" of price regulation in other fields has often tempted retailers and their suppliers to draw up schemes by which such modern trends might be applied to their own trade. Very often too little regard is paid to the existence or non-existence of the fundamental economic conditions which guarantee the success of such combination. Such was the experience of the trade in sports and games equipment. A Sports Retailers' Association had existed since 1921; in 1934 it was reconstituted as the Federation of Sports Goods Distributors Ltd., with many local associations. This body, together with the manufacturers, represented by the Federation of British Manufacturers of Sports and Games Ltd., in 1935 evolved a price protection scheme for proprietary articles based upon a protected list showing the retail prices within the scheme. No fewer than 141 manufacturers signed the agreement. Golf balls, bowls, athletic clothing and indoor games were excluded from the plan. Provision was also made for certain classes of buyers for resale, such as professional coaches, to receive trade terms.[1] Perhaps the exclusion of so many important articles was already a sign of the weaknesses in the combined effort; there were probably too many articles in the trade which could not easily be branded. The manufacturers had hoped that retailers who signed the agreement would be prepared to show a preference in their entire purchases to manufacturers who signed the manufacturers' agreement, but such reciprocity was lacking, disappointment ensued on the part of manufacturers, and the entire scheme broke down in June 1936 after only eighteen months. There had been other difficulties too. There are many different types of dealer, so that an exact definition of a "sports dealer" was almost impossible; organisations of professionals, clubs and schools are to some extent direct buyers, or also trade in sports goods. The outlets of distribution

[1] Cf. *Manchester Guardian Commercial*, 16 Sept. 1938.

are numerous and specialised. Distribution lacked the requisite reciprocity. If there had been a few clearly definable channels of distribution handling certain clearly-defined branded goods covering the whole line of business, things might have been different.[1] This negative result once more confirms our observation that the existence of clearly-branded and priced goods, which by themselves create a certain uniformity and concentration of marketing conditions, is of fundamental importance in reaching retail price agreements. It is significant that, in this trade as well, the first attempt began where such branded proprietary goods existed, just as had been the case in the grocery trade. It seems, however, that such goods did not yet dominate the retail business to the necessary extent. The intrinsic conditions for success were not present. Price combination was probably sought because it had succeeded elsewhere; the "logic" of combination was overlooked. But though the scheme failed then, it is perfectly possible that later on, when the branded goods have established themselves more firmly, a further attempt to make the combined effort may succeed.

[1] Cf. *Manchester Guardian Commercial*, loc. cit.: "There was, for instance, some difficulty in the exact definition of a sports dealer, who was regarded as being in some respects a composite dealer, who in some cases stocked athletic clothing, which, under one view, might be regarded as the proper province of the outfitter. Even footballs were originally sold within the sphere of the saddler." See also below, pp. 148–9.

CHAPTER 10

MARGINS AND DISCOUNTS

Live and Let Live is the rule of common justice.
SIR ROGER L'ESTRANGE, *Fables of Aesop.*

WHERE prices are fixed—that is, where the retailer is asked to buy for resale a branded article, possibly with a fixed or even labelled price—the problem of the regulation of margins and discounts at once arises. Why the manufacturers of such articles should desire to regulate the retail price of their wares we shall discuss later; we must first consider under what different conditions the regulation of margins takes place. In their relations with retailers, manufacturers selling branded goods are always anxious not only to maintain the price they are asking from the retailer, but also to fix and maintain the price he is asking from his customer; the manufacturer follows the retailer into the shop. Formerly the retailer bought his commodities at a bargaining price and sold them at the price the market would bear; now he is tied to the necessity of selling his stock of such goods at a price fixed beforehand, and is forced to content himself with the margin or discount allowed to him. He may still be able to enlarge his profits by increasing his turnover, but he cannot increase his profits by raising the selling price or even by selling much larger quantities at lower prices. His attention is now exclusively concentrated on the turnover he might realise, and on the margin or discount he can secure from the manufacturer.[1] This margin, however, is by no means uniform. It depends upon many circumstances. First of all, the retailer may have to deal with a single manufacturer whose products have, in spite of competition, acquired some sort of exclusive value. Such value is of quasi-monopoly character. Years ago it was said that no grocer could do without Huntley and Palmer's biscuits. This state of affairs, once regarded as unique, is now the case with thousands of products which have acquired a reputation and

[1] This is sometimes overlooked in favour of the orthodox motive, which under the rule of margins has become obsolete in many cases, that "the adoption of the principle of small profits and a large and speedy turnover is not only in the interest of the trader", etc. See J. Stephenson, *Economics of the Wholesale and Retail Trade*, 1929, p. 42.

standing for their branded article; we found that the creation of consumers' acceptance or insistence by advertisement, and so on, is not the only characteristic which may give the branded article some sort of quasi-monopoly value. We have also described the advantages of the branded article which make for what may be called "retailers' acceptance"; the retailer may prefer to make his purchases from a branded line of goods and not "in bulk from the numerous samples sent to him".[1] If the manufacturer succeeds on that ground he will have created retailers' acceptance which might be exploited in a quasi-monopolist attempt to influence prices or margins.

This was demonstrated, at an early date, in the British soap trade. In 1906 Messrs. Lever & Co. announced an increase in the price of soap to retailers, which would have reduced the margin to retailers from $17\frac{1}{2}\%$ to $12\frac{1}{2}\%$. This was a demonstration of the firm's strength and of the favoured quality of its products, which had almost acquired monopoly value; the retail trader was to bear at least part of the burden, for "Messrs. Lever refused to raise the retail price".[2] Kodak may have believed itself to be in the same strong position when in 1901 it offered preferential discounts to those dealers who were able to declare that over a given period they had supplied no other make of roll-film apparatus or material than that made by the company; two years later, however, the system was abandoned because of its unpopularity with retailers.[3] This was in fact an attempt to induce retailers to build up still greater "retailers' acceptance" for the famous American product. In general, however, lower discounts must be regarded as the expression of a high appreciation-value of the article, while bigger margins are designed to stimulate retailers' zeal. We have already noted [4] that in the publishing trade discounts vary from 25% to sometimes $33\frac{1}{3}\%$ in spite of the general Net Book Agreement; the reason may lie in the fact that publishers with an old-fashioned "goodwill" may be reluctant to increase sales by more attractive discounts.[5] In the tyre trade, rebates are allowed on turnover

[1] "Such packeted and branded goods are selected in the first place by experts in the trade, and the retailer may rely upon the quality behind the name . . . he will pay a little more for his satisfaction—and it is often worth it." Cf. C. J. Elliot, loc. cit., p. 194.

[2] Cf. Macrosty, loc. cit., and Fitzgerald, loc. cit., pp. 59–71.

[3] Cf. Macrosty, loc. cit., p. 275.

[4] Cf. p. 92.

[5] One should be careful, however, of drawing too rash conclusions in such matters. The reverse might be the case sometimes. Discounts in the book trade may be as low as 10% in certain specific cases, as for example when a bookseller obtains an order for an expensive subscription work which he does

in addition to standardised discounts.[1] Discounts on proprietary medicines and cosmetics are high and leave a good margin to pharmacists; but the high "profits" may prove an attraction to other tradesmen to stock such lines, for their average margins are sometimes as low as 10%.[2] High margins may be the means of introducing new brands. They may be the means of fighting quasi-monopolists. The fight between them and new competitors may result not in a battle of prices but in a battle of discounts, just as in some trades it may be a matter of credit and not of prices.[3] The Report on Restraint of Trade received evidence pointing the same moral. It was stated that in particular cases,

> where a manufacturer has something approaching a monopoly, and where the interest of the public in the article is assured either by advertising or owing to the article being in common use, the retailer's margin may be reduced to a small percentage.

Special articles of limited demand are in general allowed bigger discounts because the distribution cost per unit is high.[4]

A second possibility arises where trade associations have their influence upon the regulation of margins. According to the different scope of trade associations already described, such influence may greatly vary in character. A strong retail trade association may come to favourable terms with the manufacturers, who may themselves be quasi-monopolistic either by producing a favourite article with consumers' acceptance, or by being federated into some form of industrial combination. The member of the industrial combine, if it is a cartel, may be obliged to adhere to certain fixed price levels, but may be left free, individually, to fix the margin. Such is to some extent the case in the cigarette and tobacco trade, in which there is very strong price-maintenance. Every retailer is required to enter into an agreement with the Tobacco Trade Association (representing the manufacturers) before he can obtain supplies. There are three classes of distributor, graded as A, B and C, according as they are wholesalers, wholesaler-cum-retailers, or retailers buying from

not carry in stock; on the other hand, there may be some sort of sliding scale arrangements, reducing the high discounts when a minimum size of order is not reached. Cf. *Manchester Guardian Commercial*, 24 June 1938.

[1] Cf. ib., 14 April 1939.

[2] Cf. *Pharmaceutical Journal*, 30 April 1940, p. 239.

[3] Cf., for instance, the trade in building materials, *Manchester Guardian Commercial*, 16 Dec. 1938: "There is little doubt that the competition between suppliers of material is not only in regard to prices and quality but also in length of credit."

[4] Cf. Report on Restraint of Trade, pp. 15–16.

wholesalers. Each grade has a distinctive form of agreement requiring the observance of price-maintaining terms, but on the other hand discounts are not uniform on all lines handled by tobacconists. The National Union of Retail Tobacconists has a Prices Committee which wishes to secure certain discount terms, such as 21–25% for the retailer of cigarettes and 17% on tobacco. These terms, by a system similar to those of other trades already mentioned, are related to certain minimum quantities to be handled, and are distinct from settlement discounts, quantity rebates and bonuses. But, as the *Manchester Guardian* not long ago remarked, in describing the condition of this trade as characterised by a strong concentration of manufacturers (seven firms take the leading share of the manufacture): " The hope of retailers in securing improved trade terms lies to some extent in promoting competition between manufacturers." [1] Here, indeed, lies the crux of the situation. The amount of discount and the regulation of margins is not solved simply by the confronting of one association with another. It remains important which is the strongest side, and this again will depend upon the composition of the associations themselves ; whether they are dominated by some few and powerful concerns, or by a relatively large number of members of the same degree of strength.

It can be said that a great number of retail trade associations have been absolutely successful in the regulation of margins—i.e. in a so-called price leadership—though for such policy hard and fast rules are not essential. The Proprietary Articles Trade Association, for example, refuses to place on its Protected List articles in respect of which the percentage margins proposed to be allowed to the wholesaler and retailer fall below a certain minimum; the Stationers' Association of Great Britain and Ireland requires the manufacturers, except in special circumstances, to allow a full $33\frac{1}{3}\%$ on turnover to the retail distributor of proprietary lines protected by the Association ; the photographic manufacturers fix by agreement among themselves both the price of their products and the distributors' margin. [2] It is obvious that a retailers' association dealing with associated manufacturers of different branches may succeed in securing for its members a widely

[1] Cf. *Manchester Guardian*, 29 July 1938.

[2] Cf. Report on Restraint of Trade, p. 16. As to the latter trade, it should be remembered that, nowadays, the number of " genuine " photographic dealers is " only " some 500 in Great Britain, while at least 9,000 to 10,000 chemists, who are mostly members of the Proprietary Articles Trade Association by their membership of the National Pharmaceutical Union, sell photographical materials ; cf. *Manchester Guardian Commercial*, loc. cit.

divergent complex of margins and discounts, rebates and bonuses. The gross margin obtained by grocers, for instance, with their widely varying stock of goods and lines, depends very much on this point. Where manufacture or production is concentrated in a few hands, and those few firms work in close agreement, the distributors' margin tends to be small.[1] We can frequently read in trade journals that a still further increase of concentration among manufacturers may lead to a reduction of margins.[2] In the sweet confectionery trade the so-called " big five " have what is generally called " price leadership " ; they are powerful enough to stop price-cutters, and the ordinary retailer looks to them to do so.[3] The " big five " pursue a policy of agreeing among themselves on the general line of development and of giving notice to the smaller companies so that they may bring their plans into line, should they wish to do so. This procedure applies to general revisions of price lists. In a few cases manufacturers have sought to tempt trade by improved discounts, but these instances have not caused a serious disturbance to the price leaders and their agreements, as the public, in the cases of branded confectionery goods, may be expected to buy known and widely advertised lines.[4] Yet it has happened that in a period of falling raw material prices, the remaining competition has led to lower prices and, automatically, to a fall in the value of the retailers' percentage trade discounts.

Margins will remain elastic to the same extent that the quasi-monopolist organisation among manufacturers, or among retailers, or between both of their organisations, is subject to fluctuation or instability. Firms outside the manufacturing combinations will be prepared to grant bigger discounts or margins to capture retailers. Well-established cartels with firm leadership, certain of " retailers' acceptance ", do not need to consider the problem of keeping retailers within their domination when they frame margin policy, but in general they follow the principle of " live and let live ".[5] It may well happen that " too big " a margin

[1] Cf. *Manchester Guardian Commercial*, 26 Aug. 1938.

[2] Cf., for instance, *Pharmaceutical Journal*, 13 April 1940, pp. 239–40.

[3] Cf., for instance, *The National Association* (of Master Bakers, Confectioners and Caterers) *Review* of 27 March 1940, p. 92.

[4] Cf. " Organisation Tasks for Sweet Confectioners ", in *Manchester Guardian Commercial*, 5 Aug. 1938.

[5] In the strongly dominated tobacco trade, retailers constantly complain about " low margins ". At a meeting of a section of the Tobacco Trade Association the chairman observed lately that " the general retail trades in the country were making 33⅓% and yet the tobacco trade were arguing whether they could get 17 or 20%. It was wrong that the manufacturers should adopt such a mean and close attitude towards the shopkeepers who were making the

may act as an impetus to growth in the number of retail outlets, and this may be neither in the manufacturers' interest nor in the retailers'. There is something of a dilemma here;[1] a big discount may add to the direct profits of the retailer, but it may be dangerously attractive to new competitors, unless the latter are checked by a policy of "distance limit" and similar measures. It is rarely stated in public that big margins attract new competition, at any rate before new protective measures become urgently necessary against such "ruinous" competition. It is important to record that before the Ganzoni Committee of 1937 it was observed by Mr. Bryan, the Chairman of the Pharmaceutical Union, that forty years ago, after some heavy price-cutting in branded goods,

> retail chemists persuaded the manufacturers to stop this price-cutting, and to-day most of these articles are sold at prices fixed by the maker. *These fixed prices and profits* [!] *have become an inducement to other traders* to sell these goods, and these traders have proved a very ready market for manufacturers of patent medicines.[2]

Further evidence is an article by Mr. F. C. Wilson in the *Pharmaceutical Journal*, in which he explains:

> From the exceptionally high discounts even now allowed on proprietary medicines and cosmetics, it seems that pharmacists have always enough influence to secure a gross margin sufficient to maintain a standard of living commensurate with their professional status. Since, however, the sales of these articles have never been confined to pharmacists, the *high gross profit* has proved attractive to other traders, whose average margin is as low as 10%.[3]

When one speaks of a "big" discount it is not necessarily to be assumed that this is borne out by the mere percentage figure; a big discount in the percentage sense may not be a profitable one.[4]

business for them. They treated the retailers as if they were of no value at all." A resolution was passed that the Committee was viewing with anxiety and concern the continuous decrease in the percentage of profits being allowed by manufacturers on their products, especially in view of the absence of increased turnover and the constantly increasing overhead charges. Cf. *The Tobacco World*, June 1940.

[1] Cf. also Plant, loc. cit., pp. 334–5.

[2] Cf. Select Committee on Stamp Duties, 1937, pp. 92–3.

[3] Cf. *Pharmaceutical Journal*, 13 April 1940, pp. 239–40.

[4] The motor-cycle trade is a case in point; according to the *Manchester Guardian Commercial*, 23 Sept. 1938, "even when sales for accessories are taken into account, the livelihood of a dealer on the basis of the average sales per shop is not likely to be a very fat one, although the typical dealer's margin amounts to $33\frac{1}{3}$% on the retail selling price". On the average, there is about one dealer per 100 motor-cycles sold; this means a "gross" margin of, say, £200.

Disputes about the sufficiency of discounts or margins are frequent. The *Manchester Guardian Commercial* once reported in respect of groceries that " one calculation " was that no grocer's business could be conducted unless there was a profit of at least 16½% on the turnover; others pretend that 12½% would be a more correct figure; others again assert that 30% of gross profit would represent a fair existence level.[1] This uncertainty ends only when the retailer's business becomes standardised. In the United States, very extensive cost-accounting research has developed, because the extensive standardisation of trade and commodities has created the need for scientific analysis.[2] Uniform cost accounting on a broad scale is suggested, in order to improve the knowledge of cost conditions and to obtain cost statistics throughout a trade on a comparable basis [3]; such advance of knowledge will also influence the level of margins. In Britain this still belongs to an apparently remote future, but it may be accelerated by the growing difficulties which the respective associative organisations encounter in face of the divergent levels of margins and discounts claimed by retailers in one single group of trades.

The problem is still further complicated by another factor. It was reported to the Committee on Restraint of Trade that there was in some trades a " tendency to discourage undue competition for retailers' favour ".[4] In this event, a tightening of discounts or margins may drive the retailer into non-branded business offering higher margins, or into trade with outsiders of an association offering higher chances of profit. The point was not discussed by the Report, but it has already emerged from some of our observations. As the Committee had been told that the retailers' margin on price-maintained goods " is in many cases considerably lower " than that on similar unbranded goods,[5] it should surely have followed the matter further. For instance, in the sports and games equipment trade, the association between

[1] Cf. *Manchester Guardian Commercial*, 26 Aug. 1938.

[2] The literature on the subject is well reviewed by Benjamin S. Kirsh and Prof. H. R. Shapiro in *Trade Associations in Law and Business*, 1938, p. 81.

[3] Cf. ib., p. 85. For new and detailed information about cost accounting in the retail trade of U.S.A., cf. *Marketing Organisation and Technique*, loc. cit. (1940), pp. 14 sqq., chapter on " Distribution Cost Analysis " by W. L. White.

[4] Cf. Report, loc. cit., p. 25. The Proprietary Articles Association informed the Committee that they had refused to place on their protected list articles offered with a very high retailer's margin, intended to induce chemists to give a preference to an article, though they added that they would raise no difficulty if the article were of the character of a luxury.

[5] Cf. Report, loc. cit., p. 26.

manufacturers and retailers broke down, because retailers, though observing allegiance to some manufacturers in accordance with the agreed protected price list, continued to sell other manufacturers' goods at cost prices, instead of keeping loyal to the association dealers.[1] In the proprietary articles trade the association has its protected list, but, as the *Manchester Guardian Commercial* observes, "some of these lines may have competitors not on the protected list, so that the 'cutter' is still able to obtain them."[2] The retailer may be prepared to stock goods with a low-profit margin, if their reputation is such as to make it necessary for any retailer to stock them; but at the same time precisely this low profit margin will lead him to search for articles with bigger margins, especially if he trusts his individual selling capacity to introduce them to his customers.

> He can choose which article to exhibit prominently in his windows and on the counter, and when a particular brand is not asked for he can sell the brand which yields him most profit, or an article under his own label, or a non-branded article.[3]

Such window and counter articles may be price-maintained branded goods which every retailer must stock; in that case it may also be that the retailer considers just these articles as the so-called "loss leaders", though in many other cases

> loss leaders tend to be selected from among the stock of another type of retailers, so that the disorganisation of the market resulting will only affect a small proportion of its stock.[4]

All such possibilities have to be taken into account when manufacturers or their organisations proceed to decide upon retailers' margins. They also imply a consideration of the variety of goods which in the particular branch a retailer may be able to stock.

The question of margins, indeed, opens wide fields of speculation. Once the retailer, though he may be "by no means wholly under the thumb of the manufacturers of branded goods",[5] has become dependent upon the producers' might, in particular as regards branded goods and the influence exercised by trade associations, the problem arises of what the conqueror thinks to be the most profitable policy to adopt towards the conquered. Cunliffe L. Bolling writes [6]:

[1] For details, see p. 93.
[2] Cf. *Manchester Guardian Commercial*, 2 Sept. 1938.
[3] Report on Restraint of Trade, cf. p. 17.
[4] Cf. Henry Smith, loc. cit., p. 33.
[5] Cf. Report on Restraint of Trade, p. 18.
[6] Cf. loc. cit., p. 231.

> It is obviously to the advantage of the manufacturers to assist the small shopkeepers in their fight with the multiple shop companies, because, if the main retail business of the country passed into hands of a few multiple shop companies, these companies would have a powerful monopoly and would be able to dictate terms and prices to manufacturers.

This contention may be doubted ; concentration of retail outlets may be in the producers' interests, when associative arrangements between the two parties are within reach ; manufacturers may themselves find it very profitable to enter the retailing field on a big multiple or chain store scale. But where Mr. Bolling's contention is correct, and the producers' interest is strongly linked with the small retailer, the producers' attention should be firmly directed towards a " fair " calculation of the gross margins conceded, relating these to the possible net profits of retailers. When much complaint is heard about the existence of too many shops and of too great a number of new entrants into retail trading, it may well be in the interest of manufacturers to make concessions in order to prevent newcomers from becoming a prey of agents of less important manufacturers who approach them with promising offers of high margins and discounts. The manufacturers frequently overestimate their strength, and if they limit margins too stringently they are simply encouraging the business of their competitors. Some manufacturers' associations must have had bitter experiences in this respect, for the Report on Restraint of Trade stated that in certain trades the fixing of retail prices at levels yielding a reasonable profit had mitigated the incentive which existed (!) under conditions of price-cutting for the shopkeeper to make exorbitant profits on non-proprietary articles of a kind whose quality and value could not be readily judged by the public.[1] This remark should not be forgotten when " price-cutting " is discussed. It shows—perhaps without the intention of its authors, who asserted that " price-cutting, by promoting such practices, is prejudicial to the best standards of business conduct "—that low margins dictated by quasi-monopoly producers may drive retailers to seek supply from other sources, not perhaps in the interest of the respective " recognised " organisations. This may apply to retail trade associations as well as to cartels.

The loss of retailers' actual independence (for all must stock, at least to some extent, branded goods) has created a " protectorate " over their dealings ; this protectorate will be exercised,

[1] Report, p. 18.

just as organisational developments have tended to be, either by dominant manufacturers, or by dominant manufacturing associations, or by the associations of their own trade, as some sort of self-imposed protection. Weak retail traders have always been considered to require certain precautionary protection by either manufacturers or wholesalers. This, for instance, has been applied in what are commonly called "quantity discounts". Attention has been called to the fact that in selling branded articles of a perishable nature there is a danger in offering quantity discounts indiscriminately, because small shopkeepers are apt to overbuy in order to obtain discounts. This may lead to goods being sold in stale or shopsoiled condition to the discredit of the producer whose name is upon them.[1] Producers of branded goods, so far as they have quasi-monopolist power, have become the price dictators to the retailer. By producing their own branded goods big retailing concerns have to some extent escaped this domination, but it holds good for all others. By regulating the margin of resale the producer holds the strings. How far this can be carried depends upon the combined strength of the other party and largely explains the growing trend towards associative organisation on the part of retailers. But where price-leadership has become established on the part of the manufacturers, or of big wholesale merchants, it is left to them to decide for what margins they believe retailers may still be able to strive, and it is for them to decide upon a policy which will favour either all retailers in a trade group, or the most efficient ones only.[2] Things are different where retailers are led by strong organisations, a fact well recognised from time to time by retail trade associations; the aim of confronting producers' organisations with equal strength is sometimes combined with the desire to enlarge the scope of existing associations by coming to agreements with other retail associations. In support of the formation of a "Triple Board" in the tobacco trade consisting of tobacconists, newsagents and confectioners, it was declared at a meeting of associations of the three organisations in spring 1940 that

> The three organisations were faced with the same troubles [*sic !*]—namely that the bulk of their sales were for price maintained goods, and each organisation was in the hands of the combines.

[1] Cf. Bolling, loc. cit., p. 105.

[2] Cf. Report on Restraint of Trade, p. 15: "It is a matter of importance whether the percentage allowed by the manufacturer is fixed in relation to the costs of efficient businesses or of inefficient businesses."

It was easy to

> realise, therefore, that if tobacconists had the assistance of news-agents and confectioners their position would be greatly strengthened when they approached the manufacturers on a combined basis.[1]

This happened in a trade which, as we have stated before, provides an example of both strong manufacturers' and strong retailers' associations—the Tobacco Trade Association (T.T.A.) and the National Union of Retail Tobacconists (N.U.R.T.). There can be no doubt that the question of margins becomes desperately complicated where a trade spreads, or is in a position to spread, over its own original boundaries.[2]

The problem of determining the level of margins and discounts presents a formidable problem either to single manufacturers, or to their combines, or to trade associations. It is a problem which did not exist so long as manufacturers were merely preoccupied with fixing their own price levels without any regard to resale conditions. It did not exist so long as retailers fought their way individually, and the matter of cost and profits was left to unrestricted competition. It is a problem closely linked with the new industrial system on the one hand and the trade association idea of price regulation on the other. The problem of determining " costs " in relation to any sort of combination has always been extremely difficult. It has not yet been adequately solved, even in the United States, where government departments are saddled with the heavy task of trust investigations. It played an important part in the first investigations relating to the trustification in the American steel industry,[3] and it is the purpose of the standardisation of costing accounts favoured by official American bodies.[4] Many American trade associations attempted, indeed, to standardise the conditions under which trade discounts were granted and the amount of such discounts.[5] We encounter the problem once more in the administration under the National Industrial Recovery Act of 1933, here mostly in relation to the aim of the legislator to prohibit sales at prices " below the cost of production ".[6] N.R.A.

[1] Cf. *The Cigar and Tobacco World*, April 1940, p. 245.
[2] Cf. the very interesting article on the tobacco trade organisation in the *Manchester Guardian Commercial* of 29 July 1938.
[3] Cf. Hermann Levy, *Die Stahlindustrie der Vereinigten Staaten von Amerika*, Berlin, 1904, *passim*.
[4] Cf. Marquand, loc. cit., pp. 166 and 184; and see earlier in this chapter.
[5] Cf. Burns, loc. cit., p. 71.
[6] Cf. Kirsh-Shapiro, loc. cit., pp. 127 sqq., and Burns, loc. cit., pp. 479 sqq.

codes variously outlawed sales below " lowest reasonable cost ", sales below " representative costs " and sales below " average costs ", but by far the largest number of codes made it an unfair trade practice to sell below " individual costs ". What a strange new catalogue, trying to classify what is so difficult to subject to evaluation. In Britain of course the problem is far more difficult than in the United States, for the whole structure of retail trading is far less standardised. Quite apart from special circumstances, varying in different countries, the determination of " fair " margins by evaluation of cost of production and profits remains vague and fluid.[1] There are many cases, such as those in the cotton industry, in which big overcapitalised firms are cumbered with higher costs of production than smaller independents with a much smaller share of the national output of the branch of industry concerned ; should these additional costs be disregarded in determining what is to be considered a " profitable " price ? When the German Committee appointed to investigate industrial conditions published its results in 1929–30 it had to state that it was not able to arrive at anything like a clear picture of the costs of production ; a special investigation into the costs of the German iron and steel industry had to admit that " owing to the differentiation of works, the lack of uniformity in numerous costing elements, the results showed discrepancies up to 100% ".[2] Such difficulties are even greater in the retail trade.

Sometimes the bewildering uncertainty of actual " costs " and " profits " in the retail trade finds expression in keen regret among retailers themselves. For example, a leather trade journal reported that at a meeting of business men in the same trade one trader quoted 13·84% as the costs of doing business, another 21%, and again another 24% ; it was noted that " conditions in different parts of the country " made it impossible " to lay down any definite percentages on which business ought to be done ". To mention only one point : rent, rates and taxes are not within the retailer's control ; if his location is good, charges are sure to be " high ", but if he is able to show good figures such charges are only relative, and another competitor paying less in another locality might show lower profits. Some traders regard their own profit as a wage ; others think of it as a return

[1] For example, according to P. Fitzgerald's findings, the price of soap in England in 1926 was actually below what would have been " reasonable ", according to the costing schedules made up by a Committee in 1920. Cf. Fitzgerald, loc. cit., pp. 63–4.

[2] Cf. Levy, *Industrial Germany*, p. 218 ; *The New Industrial System*, p. 236.

on the money invested. The difference from the management point of view between two retailers, one guessing at his costs and the other knowing them, can hardly be disputed. The author of the above statements relating to the trade in leather goods aptly remarks that the retailer would be in a better position to calculate costs if "all his goods were price-maintained", an observation which fits our foregoing analysis.[1] It is certainly no accident that in the leather goods trade, with its lack of price-maintained commodities and its great variety of individual retail trading conditions, there are as yet no price-fixing retail trade associations.

As things are, manufacturers' associations cannot reckon upon decisive assistance in matters of uniform accountancy and easily determinable costs from the retailers. Nor can the retail trade associations themselves do so. The fixing of the margin, which plays so decisive a part in all price-maintained branded goods, must therefore rely upon vague factors and some general estimate of what gross margin percentage the retail trade will bear. It must, on such a general basis, be fought out in the particular cases by the associations of retailers and manufacturers themselves so far as they exist. Here arises the difficulty for the associations of both sides. A high margin, as we have seen, may attract new, undesired competition; it may lead to undercutting, the prevention of which, as we shall see in the next chapter, is the object of a well-defined trade association policy. A narrow or "unfair" margin, on the other hand, may induce retailers to look out for other suppliers, to be disloyal to their associative obligations, and to attempt to concentrate on more profitable bordering lines of business. It may drive many retailers out of business altogether before the damage is remedied by granting higher margins. It may accelerate the process of retail trade concentration. This may be regarded by some associations, as it has been regarded by writers upon the matter,[2] as a by no means undesirable goal, but there is actually no evidence that such policy on the part of margin-fixing associations has ever been adopted. On the contrary, it may be the definite policy of retail trade associations to protect the least efficient single unit, though at present the tendency seems more to be one of fixing the

[1] Cf. *Leather Goods*, the journal of the Leather Goods and Allied Trades, Aug. 1940, pp. 26 sqq.: "Retailers must do a little more accountancy."

[2] Cf. Neal, loc. cit., pp. 146–7: "We have been further faced by an overlapping in numbers that, by giving rise to wasteful competition and an amount of internal slack, probably more than any other single cause militates against economic working."

retailer's profit with reference to the "ordinary business of average efficiency".[1]

As long as conditions remain as we have tried to describe them, the fixing of margins remains a task of vague and uncertain character. From some examples which we have been able to adduce it emerges clearly that the closing of many gaps and loopholes of organisation and the uniform collaboration of various interlocking retail trade groups would be a fundamental condition for alleviating these difficulties. As long as in many cases these conditions remain unfulfilled, the aim of retail price-fixing combines must be directed towards a more comprehensive associative organisation, and to an effective policy to uphold existing margins, even if these margins are the result not of scientific and rational calculation but of many uncontrollable conditions and tentative measures evolved in consideration of an estimate of competitive market conditions.[2] We shall see in the next chapters that such a policy of price-maintenance has been more definitely worked out than has been the fixing of the margin itself, which for some time may remain in a fluid state. The next stage in the analysis, therefore, is to consider the measures taken to enforce the maintenance of margins once fixed, and thereby the price of the branded article.

[1] Cf. Report on Restraint of Trade, p. 15.

[2] Even in the U.S.A. the attempts to standardise margins appear to have met with little appreciation by critical observers. The Federal Trade Commission, in 1929, remarked that, though standardisation of trade practices as regards terms was in itself desirable, "the prorating of selling expenses of all goods regardless of their occasioning such expenses may sometimes involve such important amounts as to be uneconomic and unfair". Burns seems to support this view. "Conduct with regard to quantity discounts (see p. 104) was sometimes standardised by eliminating these discounts altogether, with the result that 'the differential incidence of costs of selling' is ignored." Cf. loc. cit., p. 71.

CHAPTER II

PRICE MAINTENANCE AND RETAILERS

. . . any gain in productive efficiency which is secured by the abolition of "internal" obstacles is a gain which has its cost if it is secured only by the erection of obstacles around the area.

PROFESSOR L. ROBBINS, *Economic Planning and the International Order*, 1937.

THE great variety and number of retail outlets in many trades goes far to explain the difficulties which the formation of a price-fixing retail association may encounter. At the same time, it explains the strong motives which inspire the members of such trades to see something done, outside their range of individual action, to secure their existing profits against what they believe to be unfair competition. In the case of branded and price-marked or coded articles this means associative price-maintenance. Though the desire to see this established may be present with every retailer, and perhaps mostly with the small and financially weakest retailer, the great number of small units makes the achievement of the purpose, as we have seen before, least probable; on the contrary, it generally rests with the bigger representatives of a retail trade, or upon a nucleus of bigger firms which may be able to exert some definite price-leadership in an organisation, to inspire a movement for trade association and to maintain its strength when it is once formed.

Where the system of retailing is not one of shops alone, but is also left to agents who approach individual customers on their own initiative, the possibilities of keeping up prices by keeping up margins is least developed—a fact which only confirms our foregoing observations. The sale of vacuum cleaners still remains uncontrollable, though the problem is constantly discussed by trade circles which are anxious to see price-maintenance inaugurated.[1] There are many such articles which lend themselves to "house to house" sale by special tradesmen—high-priced books, water softeners, washing machines, all kinds of smaller

[1] Cf., for instance, *Electric Trading*, March 1940, p. 30.

patented articles come into this category. These agents, who in many cases are people on the borderline of the subsistence level, are frequently inclined to effect sales "at any cost"—i.e. by a great sacrifice of the prescribed discount—a habit which may not keep them above water, but which nevertheless means some undercutting which may adversely affect the retail traders of the area. In the case of products sold normally through the retail trade, direct selling even of a temporary character may antagonise retailers unless their approval is secured in advance, or unless they accept some scheme for giving them an overriding commission on sales effected in their districts.[1] Such conditions, however, interesting as they are as regards the scope of price-maintenance, are only relevant as regards a small section of the retail trade. For the bulk of retailers grouped in a trade association with the aim of price-maintenance, the problem is not complicated in this way. Differences of view in respect of the actual level of margins to be granted or the fixing of prices, where the trade association and not the manufacturer is settling policy, hardly exist, for the avowed object of price policy is merely to maintain prices against price-cutters within or outside the association. Retail traders' competition in former days was considered by economists as useful, for it appeared unshakable.[2] Though sometimes apprehension was expressed that, nevertheless, retailers might combine, precisely in consequence of too fierce a competition, and though sometimes the waste of competition resulting from the great number of retailers was complained of, and the argument put forward that "we pay heavily for the privilege of freedom in the use of our time" by unsystematic organisation of retailing,[3] there was no attempt made anywhere to justify or defend combinations against such traders as wished to sell at lower prices than those fixed by an agreement of any kind between other retail traders. It is in this respect that during the last decades the attitude has so greatly changed. The whole trend of what might be called modern textbooks of retailing is to state a strong argument in favour of fixed prices and margins and to develop an almost ethical theory against price-cutting and price-cutters.

We may give an example in quoting Bolling's very elaborate and efficient book on Sales Management. The retailer is here warned against the "evil" of price-cutting.

[1] Cf. an interesting article in the *Manchester Guardian Commercial*, on "Speciality Selling", 1938, p. 214.
[2] Cf. Henry Smith, loc. cit., pp. 105 sqq.
[3] See Taussig, quoted by Smith, p. 111.

> A trader may gain business by selling for sixpence an article usually sold for sevenpence, but he will lose his business if another trader begins to sell the same article for fivepence.[1]

It is not explained, however, whether it will really be possible for other traders to sell for fivepence, or even for a small fraction lower than sixpence, without risking the existence of their business, or, at least, their profits on the article. Why the trader can sell for fivepence and not for sixpence is not discussed ; it is not taken into account that although such policy may result from some irrational calculation or speculation, it may also result from the fact that the one trader may be able to make profits from prices or margins where another fails. Another passage speaks of that " murderous competitor—the price cutter " and recommends the adoption of certain services by retailers as " a weapon against the cutter ", such as the introduction of a lending library or a telephone call office or an agency for theatre tickets.[2] " Profit margins are cut so fine," it is argued, that in order to take a small fraction off " the correct [!] price " of an article the retailer must reduce the quality of his service. The " just price " appears once more in literature—this time as a shield for the fair trader. The former notion that it might be profitable to sell bigger quantities at a lower unit price seems to be forgotten.[3] Another writer advises his would-be grocer not to practise price-cutting :

> The retailer has to remember that when he cuts the price, he normally cuts his profits down.[4]

In former days—which are not so long ago—cheaper prices of whatever goods where offered in competition with higher-priced goods of the same kind were in general considered as a boon to the public. The shopkeeper who was able to lower his prices was in general praised for his efficiency. The limit to such conditions was merely set by laws prohibiting unfair and fraudulent practices, such as advertising " sales " which in fact were not genuine sales at all, or the claiming of certain preferential advantages which did not in fact exist. The laws relating to such " unfair competition " or " *concurrence déloyale* " or " *unlauterer Wettbewerb* " are based upon the same principles in all countries, but they certainly vary widely in scope. It cannot be

[1] Loc cit., p. 103. [2] Cf. ib., pp. 241–2.
[3] On the other hand, writers who still rely upon that principle make no attempt to discuss it in connection with price-cutting—so James Stephenson, *Economics of Wholesale and Retail Trade*, 1929, p. 42.
[4] Cf. C. J. Elliot, *The Retail Grocery Trade*, 1938, p. 283.

said that they are particularly stringent in Britain compared with other countries. The writer of this book has frequently noticed shops advertising " last days of sales " while in fact such " sales " were lasting over months and might still go on ; he has frequently noted that certain goods were conspicuously displayed in the windows of speciality shops—such as handsome wallets, purses, etc.—while on entering the shop with a view to purchase the customer was at once offered other, more expensive, goods of the same kind, being told that it was quite impossible to take the particular commodity from the window " just now " and that it was the only one left. Hotels, in provincial towns, frequently advertise " central heating " ; the traveller, attracted by such promising prospects, finds no radiator in any private room, but in the public rooms only. Yet such practices have attracted little attention in Britain among the trades concerned, although their effect upon competition is hardly different from that of price-cutting. There is not much practical difference between one hotel which undercuts the local price of a bedroom by offering it at *3s. 6d.* when the others have agreed upon a minimum of *4s. 6d.* (while, in fact, there are only two bedrooms of the type available) and another which attracts the uninformed customer by making him believe that he gets a centrally-heated room while in fact he does not get it. However that may be, apart from strictly illegal practices of unfair competition, the retailer selling the same article or an article of the same quality cheaper than his competitor was not considered with contempt by commercial writers in former days. This new tendency only began with the branded and price-maintained article. We may give another instance :

> All business is founded on an ages-old agreement among honest men that a reasonable profit belongs to each who renders service. Any man who can, through efficiency or great volume [Does the writer overlook the interrelation of both ?—H. L.], shave the price he must charge on any article, is like a good golfer. He wins by skill. He is entitled not only to the admiration of his competitors, but to the thanks of the public as well.

But

> any man who, at the expense of his fellow merchants or manufacturers, persistently sells any article without taking a decent [*sic !*] profit is like the cheating golfer. If everybody followed his example, as he knows well enough, the whole commercial structure would smash to hell. But, because nobody can sue or expel him, he does in business what he would never dare on golf links or at the bridge

table. Worse yet, he has the effrontery to label this anti-social activity " advertising ". This is adding insult to injury.

So writes Kenneth Goode in his *Manual of Modern Advertising* [1] under " Cut Prices ". We do not propose to argue with the author on economic grounds. We quote his words as an interesting illustration of the change in attitude towards competition which has come along with the price-fixed commodity, and which is apparently creating a new sociological sounding board of what, in the view of such writers, should be considered proper retail business policy.

One criticism must be made of this viewpoint. Competition which lowered prices was always that of some competitors against others; seldom have those who were thus attacked not claimed that such competition was of a nature destructive to the entire trade. " Outsiders " have acted in that way, and still act, against industrial combination, and the latter have claimed that by doing so outsiders were undermining the whole organisational structure of the particular industry; trusts and cartels, on their part, have tried and still try by underselling either to drive outsiders out of business or to force them into agreement, and again the outsiders in their turn claim that such practices are undermining a large section of the trade.[2]

Any inventor who puts forward a new and cheaper process may " smash the whole commercial structure ". It is impossible to interpret cheaper selling simply as an act of mere individual sinister salesmanship. Indeed, the opposite is true. If we consider price-cutting as at least a sectional feature of selling—and otherwise it could be ignored—it must have a general effect in one way or another, either by pressure on the majority to reduce prices, or by pressure on the minority to raise prices again—i.e. to

[1] Cf. loc. cit., pp. 362–3.

[2] For those who feel morally alarmed about tradesmen who undermine by cheaper prices the existence of the " normal " and " traditional " member of the respective trading " community " it may be useful to examine the development of some firms which to-day cannot be regarded as interlopers. Boots began as the cash chemists, " selling below old-fashioned chemists' prices ", according to Prof. J. H. Clapham. Their shops were pushing out from headquarters at Nottingham during the eighties. In 1888 the Boots Pure Drug Co., the private manufacturing company which was to supply the shops, was registered. In 1892, the shops having already spread some way, preceded by the announcement that " Boots is coming ", the distributive company was registered in its turn. Far-reaching, and until then unheard-of, methods of impressive advertisement were coupled with keen price competition. Nobody to-day will deny the public success of this well-organised business which at one time might have been regarded as an offensive price-cutter by the rank and file of chemists. Cf. Prof. J. H. Clapham, *An Economic History of Britain*, 1938, pp. 265–6.

stop price-cutting. We may legitimately doubt whether the first effect should be regarded as an " injury " ; if the latter effect is excluded one must assume that entire sections of the retail trade are constantly embarking in ruinous business, that price-cutters are merely traders going into business with the hope of securing profits by loss-leaders which in fact will never become a reality—and this is hardly credible. The fact of the matter is that if price-cutting were carried on only by a negligible few, ruining their business themselves—a preposterous assumption—there would be no reason for the vast majority of " loyal " traders and for their associations to be alarmed and to create such extensive and expensive machinery to prevent price-cutting ; if, however, the practice is not that of a few, but characterises important groups or sectors of trade, which thus make profits, it can hardly be accused of being a system of " cheating ".

Many recent developments support this logical approach. The cheap sixpenny book was certainly considered by the traditional publishing trade and its organisations as price-cutting of the worst kind. There was no price-fixing by the associated publishers, but they had developed certain price standards, such as the *7s. 6d.* book, on more or less common lines.[1] Was Mr. Bernard Shaw then a price-cutter ? He followed the first edition of his *Intelligent Woman's Guide to Socialism*, published at 15*s.*, with a cheap edition at 5*s.*, and now the same book has been reproduced with paper covers in a popular series, in two parts at sixpence each. This kind of development was regarded by the publishers as the work of some new intruders, apparently the work of

> organisations which, themselves outside the established [*sic !*] trade, profess neither allegiance nor responsibility towards it. The flow of cheap books (either reprints of books which their original publishers had laboriously built up or new books published by authors whom their original publishers have spent much time and money in establishing) [2] has wandered outside trade channels.

So says the *Bookseller* in an apparently inspired article.[3] According to Mr. Goode's and others' general convictions the development of the sixpenny book price-cutter should have been disastrous ; it should have ruined the " whole commercial structure "

[1] Cf. *Economist*, 3 Dec. 1938, p. 469. See also p. 92 above.

[2] This contention is not altogether correct, though it may have been the first idea. Sixpenny volumes now represent many original works and many of these are by authors who were not made famous by particular publishers.

[3] Cf. *Bookseller*, 22 Aug. 1940, p. 216.

of the book trade ; it should have ruined its originators—for how was it to be imagined that a book covering in small print as many pages as big volumes, garnished sometimes with illustrations, could be sold at a profit at sixpence when others had to take 7*s.* 6*d.* or more ? But the publishers "outside the trade channels" were not only not ruined, but according to the same journal others had to agree that "the demand to-day is for cheap books"—a fact not demonstrated before the arrival of the cheap books by the "established publishing trade". After years of unveiled suspicion as regards the "cheap" books,[1] the formation of the British Publishers' Guild, with the intent of publishing sixpenny and shilling books, was finally a step in the same direction by the "established publishing trade"—a development which could hardly have happened if Mr. Goode's theories were altogether correct and applicable to real economic life.

Another example may be cited, which, in spite of its crusade against the price-cutters, was narrated by a London evening paper ; it told its readers that

> the first cutters, strange to say, were among the big stores, who are now among the keenest enemies of the practice. About forty years ago cutting was rampant. There was no question, of course, of getting supplies from a criminal source. They cut on one line to attract custom, and made it up on other lines. This is in fact the very core of the price-cutting racket.[2]

Here we have the other possibility which we have mentioned before ; the cutter does not, as so many predict, ruin his own business and lose his money ; on the contrary, he becomes a well-established institution and after some time drops his original "sinister" system because he can do without it ; he even sets an example of business progress and organisation.

It may be argued that one nation has recognised by legislation the morality and expediency of prohibiting selling below cost. We have already referred to the United States N.R.A. codes, subsequently proved unconstitutional. Sales below cost are in some of the States of the U.S.A. actually regarded as "unfair practices". One of the most prominent of such States Acts—the Minnesota Unfair Trade Practices Act—has even been declared unconstitutional in some respects, and a Three-Judge

[1] Cf. *Economist*, 3 Dec. 1938, where Mr. Harold Raymond's *Publishing and Bookselling* is quoted : "The stability of our trade and a reasonable remuneration for the author, publisher and bookseller can only be preserved by maintaining a fairly high initial price for general literature, and avoiding too rapid and too steep a reduction in price in subsequent cheap editions."

[2] Cf. *Evening Standard*, 10 March 1939, "The Cut-Price Racket".

Federal Court has in one case denied the right of the legislature to create a presumption of sales below cost with wrongful intent.[1] The Court invalidated as vague, indefinite, arbitrary and discriminatory a cost-survey provision of the Act which made an industry's average cost *prima facie* evidence of the costs of all its members in a given locality or area. Professor Herbert F. Taggert, in a very interesting and detailed study of the matter, comes to the conclusion that " rule against sales below individual cost is chimerical and incapable of enforcement ".[2] We encounter here the same difficulties as those discussed in the preceding chapter. At the same time it should be remembered that legislation in the U.S.A., trying to stop underselling at loss prices, does not intend to protect the policy of price-maintenance as practised by trade associations; on the contrary, as Kirsh and Shapiro point out,[3] the measures enacted by the different States had their origin in supplementary anti-trust laws. The enactments against " price-cutting " were really a fight in the national sphere against what at an early date had become the object of anti-dumping clauses in international commercial policy. It was the big concern, the dominant price leader, which became the target of legislation against selling at loss prices, not the undercutting outsider; the measures were devised with the object of preventing monopoly, and not of guaranteeing price-maintenance by trade associations.

It remains to be seen whether British retail trade associations are prepared to oppose in principle with the same energy underselling practices of British cartels and quasi-trusts, when such practices are applied against weaker outsiders, as they themselves apply in their anti-price-cutting campaign against such outsiders as try to undersell against themselves. As the American legislation shows, the attempt to undersell a fellow manufacturer by quoting lower prices should be regarded as no less " immoral " than the attempt of retailers to undersell the prices fixed by the trade associations to which they may not belong. Possibly, however, the trade associations favour the view: *quod licet Jovi, non licet bovi.* As things are, the trade association outsider is branded as the villain in the trade. When during the first six months of the war a merchant complained that he was not allowed to do any more business with certain firms unless he joined an association,

[1] Cf. for details Kirsh and Shapiro, loc. cit., pp. 130–1.
[2] Cf. H. F. Taggert, *The Cost Principle in Minimum Price Regulation*, 1938, p. 8 and *passim*.
[3] Cf. loc. cit., p. 128.

which demanded 100 guineas as entrance fee, the secretary of the association replied in a letter to a trade journal:

> Every self-respecting member of a trading community joins his trade organisation as a matter of course.[1]

In another case, a reader asked his trade journal why it was permitted that an association allowed members who confined their trade to a group of manufacturers a bigger discount than to the " free retailer ", and was curtly reminded that

> standardisation of trading policy is one of the prerequisites to properly ordered trading, and the industry naturally looks to the principal association . . . for leadership.[2]

It becomes a crime against some " community " of interest—a social crime therefore—to remain outside organisations which regulate sales and/or prices ; those who hold this view, no doubt, would not hesitate to consider the price fixed and maintained by trade associations as not only justified, but as the " moral " price to which every ethically-minded member of the association should willingly adhere. The competitive-price formula had its " moral " background ; price competition in the days of *laissez-faire* was regarded as one of the many expressions of the morale of liberty and individual efficiency,[3] and not simply as a sound business system. Price-maintenance is nowadays hailed as the expression of an associative system among traders which bears witness to the morale of community feeling.

In such circumstances it is hardly surprising that the animosity against price-cutting has found its way into the columns of the daily press. The *Evening Standard* published a number of articles and smaller notices about price-cutting and its effects in March 1939. These articles cannot be left unmentioned, for their sociological significance should not be ignored. One of them, apparently designed to introduce the reader into the somewhat complicated problem, was entitled : " The Cut-Price Racket ".[4] The next day another followed under the caption : " Put Life Savings into Business—Losing it to Cut-Price Traders ".[5] Other smaller notices, such as " Price Cutting Closed His 5 London Shops " soon followed. The author made it clear that in many trades " there are powerful trade associations which carry on the war against cutters in their own field ". He laid stress on the

[1] Cf. *The Machinery Market*, 5 Jan. 1940, p. 20; also ib. 12 Jan. p. 18.
[2] Cf. *Electrical Trading and Radio Manufacturing*, Dec. 1940.
[3] Cf. Hermann Levy, *Economic Liberalism*, 1913, pp. 86 sqq. and p. 109.
[4] Cf. *Evening Standard*, 10 March 1939.
[5] Cf. ib., 11 March 1939.

contention that a great mass of cut-price commodities were obtained by the sellers in a fraudulent way, that they were stolen goods or procured from manufacturers or wholesalers by false and fraudulent pretences. The author quotes a magistrate as saying,

> If only the public would realise that in buying at these cut-price shops they are lending their help to criminal activities, they would think more carefully about where they buy.

But, while the author chose this remark as an interesting introduction to his well-written article, he did not explain what the public should do to distinguish between the fraudulent and the non-fraudulent price-cutter. He had to agree that it would be a mistake to think that the cutters were dependent wholly, or even mainly, upon criminals for their supplies. He enumerated three types of buyers concerned with the cut-price racket who could be assumed to buy such goods without knowing that they might have been dishonestly procured. One can really not blame the public if it buys cut-price articles under such circumstances. It is of course undeniable that goods acquired by fraud may be hastily sold at cut prices, and other forms of illegitimate trading may be bolstered in this way. But these are largely matters for the police to settle, and can scarcely be said to dominate the general picture of cut-price selling.[1] On the other hand, branded and price-maintained goods may give the stimulus to various tricks; for example, hairdressers may supply cut-price dealers with goods they have pretended to acquire for their own business. The *Evening Standard's* reporter complained,

> There are hairdressers who are doing no regular trade themselves but are constantly ordering at wholesale prices goods which they do not need themselves, but sell at once at a small profit to cutters.[2]

It is very understandable that trade associations will fight such practices. But the reporter did not explain how it could happen that the discount or margin on such goods was able to give a profit to the hairdressing shop which acted as "wholesaler",

[1] Cf. *Economist*, 6 May 1939, p. 297. It should not be assumed, on the other hand, that the development of price-maintenance has given such a stimulus to theft that for this reason alone the position of price-fixing would be threatened. A parallel might be drawn with the increase of smuggling under prohibitive customs duties, and according to this parallel, the blame might not unjustly be laid upon those who fix the prices of branded goods. If the highest prices can be procured for branded and coded articles, the aim of thieves might become particularly concentrated on such goods and be diverted from unbranded commodities.

[2] Cf. *Evening Standard*, 15 March 1939.

probably to the agent who bought the goods from it, and certainly to the retailer who sold them at cut prices. The margin must have been rather high to support profits for so many. It would have been well worth the investigator's while to examine this point. Unhappily, the purpose of the article was to show that the loyal hairdresser who sold his hair-creams and similar articles at the fixed price was severely damaged by such "practices"; it was apparently assumed that fixed prices were *a priori* identical with "fair prices".[1] The author did not even approach the question whether either margins or prices might be higher than "fair", and if so what kind of differential rent might accrue to the most efficient shops. He gave a very pathetic story of a man who put his life savings into a retail business and lost them through the operations of cut-price traders. He did not describe the circumstances of the shopkeeper very elaborately, but it emerged from his narrative that the man put borrowed money in as well, that he started a high-class confectionery and tobacco shop, that he was "getting on in years" and that he said to himself that "the shop would see him through". Two cutters started, the one with "nothing more" than a "tiny" kiosk, apparently much beneath the dignity of the shopkeeper; the other, on the contrary, the type of the bigger man "with a number of shops in South London, all cutting prices". But the effect in both cases of the new competition appears to have been the same: "it meant working 12 hours a day, which, of course [*sic!*] is not quite what he had looked forward to". The final result was: "He has to work a great deal harder. He has to pay heavier overheads than before, because his own shop is open longer and needs more light. He is desperate." The example is full of interesting points. Apparently the shopkeeper belonged to the well-known class of people who wish to invest their savings (augmented by some borrowed capital) in a way which might secure them some sort of comfortable independent living, with a prospect of an undisturbed old age. Advertisements in the daily press prey largely upon such shopkeepers' prospects, offering wonderful opportunities, with almost carefree life, almost no work, a "free" home and a good income. In many cases they lay stress on the fact that no previous knowledge is necessary, that the previous owner would gladly instruct the newcomer, and so on. No sociology of the small shopkeeper has yet been attempted; such an investigation might tremendously improve our knowledge of conditions which greatly influence an important

[1] Cf. *Evening Standard*, 17 March 1939.

section of retail trade, with vast possible reactions on trade policy and future legislation. But all the known facts point in the same direction, i.e. that the small shopkeeper without sufficient knowledge, starting business in the hope of securing a comfortable living, will very probably fail. The experience with lump sums given to incapacitated industrial workers to start some business has been, indeed, most disappointing, and an overwhelming consensus of evidence, both in England and in the U.S.A., shows what a large proportion of these sums is continuously being lost in business adventures of the type described by the *Evening Standard*.[1] The Ministry of Pensions has, in deviating from the arrangements under the Workmen's Compensation statute in Britain, provided very strict safeguards as regards the commutation of pensions into some small capital; War Pensions Committees consider the applications when they are made with a view to taking over a business, review them with great thoroughness, with full regard to the "previous business experience and probable business ability" of the applicant. Yet an inquiry into the result of 58 grants made to assist applicants in carrying on business showed that 23 pensioners had probably suffered total or partial loss.[2]

Such conditions have to be taken into account before we can judge the effect of price-cutters upon other shopkeepers. The statement in the case mentioned above, that the complaining shopkeeper had to work harder and longer, that a small kiosk was an obstacle to his continuous prosperity, or that the appearance of a more pretentious shopkeeper should have led to his ruin is not a convincing justification of his case if actually the public could be served cheaper and the newcomers could hold their position. An illuminating letter was received by the *Evening Standard*; Mr. H. D. Case, of Teddington, wrote:

> As long as a citizen has paid cash for his goods and not accepted them from the manufacturer on credit or on a sale-or-return basis, he should be allowed to dispose of them at his own price. If he gives his stock away he is a philanthropist. If he sells at a loss he is a lunatic. If he allows the manufacturer to dictate the profit he shall make, he is "a pillar of society", but when he chooses to sell his stock at his own price he becomes "anti-social" and a "menace"! Something wrong somewhere!

[1] Cf. for full details, Sir Arnold Wilson and Professor Hermann Levy, *Workmen's Compensation*, Vol. II, 1941, pp. 129–50.

[2] Cf. Evidence of Ministry of Pensions before the Royal Commission on Workmen's Compensation, 1 June 1939, pp. 385–7; also oral evidence by Mr. Glover (A. 3520): "Lump sums were not, generally, well used."

This practical wisdom would have been of some guidance to the Committee on Restraint of Trade when it discussed the problem nine years earlier. But the Committee apparently shared the view of the other side. They stated: [1]

> We have been impressed by the volume and force of the testimony as to the harmful effects of price cutting upon the manufacturers and distributors of advertised branded goods and ultimately, as was contended, upon the public. The selling of branded goods at abnormally low prices in order to attract customers to buy other goods, tends to disorganise and antagonise the retail trade. Shopkeepers in the neighbourhood of price cutters cease to stock the goods affected, or at any rate cease to push them, with the result that the manufacturer finds his sales falling off. In the end the price cutters themselves may cease to stock the goods, finding they are no longer effective as a decoy.

The Committee even went so far as to proclaim a certain right of the manufacturer of branded goods, in view of his advertising expenses,

> to protect the final conditions of sale of the goods since the prosperity of his trade is at stake.

As the evidence was not published we do not know how far this view was based upon the evidence of the public as well as upon that of trade associations; we do not know whether the Committee investigated the propriety of certain advertisements and the justification of consumers' acceptance created by such advertising before it proclaimed the "right" of the manufacturer to recoup his expenses by a "protection" of prices. The Committee should surely have considered the economic realities more acutely and distinctly. On the one hand it is contended that price-cutters are short-lived—a contention completely disposed of as a general thesis by the experience of the first price-cutters in the field, but which if justified would certainly suggest that the right policy, in Adam Smith's words, is to leave them to ruin themselves "to their own discretion". If, on the other hand, the price-cutters are not of a transitory nature and can hold their own, why should they be considered as "ultimately" harmful to the public? And what did the Committee mean when it referred to "abnormally" low prices? Were such prices leaving no profit to the re-seller? If they still did so, why could not others exist on such profits? Was it an "immoral" practice to sell branded and non-branded goods and to keep a business going by giving up some profit on branded goods to make it up by the profits on other

[1] Cf. loc. cit., p. 23.

goods? Is it an immoral practice for a public house, which combines some catering with its business, to make no profit out of the meals in order to make more on the extra consumption of beer? Did the Committee investigate how far department stores actually make very small profits on many articles which they are expected to stock and reimburse themselves by the sale of others?

> The very variety of merchandise which has to be stocked in some departments in order to achieve the objective of being the Universal Provider is, unless subject to constant and rigorous control, another source of potential weakness, especially during a period of falling prices,

writes Neal.[1] He rightly stresses the fact that " each department of a store is, in effect, a separate retail shop " ; but it is common knowledge that again these " separate " shops must in many instances be kept running for other purposes than the profit they yield. Was it so very far from what is generally considered as the competition of cut-price small shops when a commercial authority on the subject of retail trade lately observed that

> Department stores have become so engrossed in competing in the latest fashions or in cut-price " smashes " that they have often overlooked the enormous scope of profitable business in the development of basic lines of merchandise.[2]

But trade associations, and in particular those which count potential department stores among their members, have never raised complaints against this kind of competition.

The problem which confronts the economics of retail trade in regard to price-cutting is certainly a complex one. But it is not made easier by an admixture of moral pretences, such as the " protection of the small shopkeeper " on the retirement list, or the description of a list price as " fair " (i.e. moral), or the claim of some special rights of existence for established businesses and business systems. Such methods of thought, at any rate, cannot satisfy those who believe that rational economic thinking is the proper line of guidance in matters of prices and national price policy. The problem is in fact simpler than it first appears. It resolves itself into the problem of the efficiency of the ordinary retailer versus the price-cutter. An inefficient price-cutter—having acquired his goods in a lawful way—should not be a

[1] Cf. Neal, loc. cit., pp. 21–2.
[2] Cf. *Store*, Nov. 1939, " Planning for a Turnover of £1,000,000 ".

constant menace to the efficient retailer who is " loyal " to the labelled price. The efficient price-cutter may be regarded as an asset to competition, provided again that his methods of disposal of his goods conform to the legal necessities as laid down in the enactments against unfair competition. If the price-cutter is able to keep himself above water, the public should not be regarded as " ultimately " suffering, and the losses of the less efficient re-saler should not be viewed as a national calamity.

It seems that the Committee on Restraint of Trade, in spite of its rather tepid conclusions, and its constant attempt to avoid matters requiring definite economic decisions,[1] nevertheless felt, here and there, that the problem of " efficiency " looms constantly in the background of any conception of the " fairness " of price maintenance. Trade associations trying to make price agreements are constantly faced by the problem of finding out what " efficiency " means in relation to fair price fixing. A price evenly fixed for the efficient and less efficient may represent a very valuable differential rent to the former. This point was early recognised by economists as the factor which distinguished the position of farming landowners, if protected by tariffs and a " fixed " price, from industrial producers under free competition. Yet the very desire of trade associations to arrive at regulated prices places them in the same category as the monopolist tiller of the land. At a meeting of the London Iron and Steel Exchange, Sir William Firth frankly explained that " it was obvious that the only prices that would be voluntarily agreed upon would be those that showed a profit to the least efficient works ".[3] Strong cartels have in the past been undermined from within by the increase of small competitors of a less efficient character which apparently had been stimulated into existence by high differential profits.[3] Cartels are to some extent " protecting " associations ; such tendencies may be counteracted by the influence of big concerns within the cartel, which follow their own interests while using cartel membership as a weapon against outside competition.[4] How far the cartel will use its powers to carry into effect such protection depends upon its strength and its power to restrict production quotas. The big concerns in an association do not always want to see the less efficient go out of business.

[1] Cf. for instance, Section 59 of the Report.

[2] Cf. *Statist*, 3 Feb. 1934, p. 162.

[3] E.g. in the German potash industry : cf. for the critical stages of German potash cartellisation Hermann Levy, *Industrial Germany*, 1935, pp. 34–5 and *passim*.

[4] Cf. Hermann Levy, *The New Industrial System*, pp. 175 sqq. for details.

A journal of the British milling trade, for example, reported recently that

> some of the small concerns have had to seek financial aid from their more powerful competitors. This has been given generously in the form of loans. Such firms as Ranks and Spillers will be able to weather the storm owing to their immense financial resources.[1]

The practical difficulties of fixing prices " fair " to all interests are such that British retail trade associations have usually chosen the policy of leaving price-fixing to the individual manufacturers, contenting themselves in most cases with a strict enforcement of maintenance of these prices.

The Committee on Restraint of Trade was well aware that some consideration had to be paid to the differential efficiency of re-sellers. It left no doubt that " the entire abolition of price maintenance would lead to the disappearance of many small retail shops."[2] This contention should not be uncritically endorsed, for we have seen in previous chapters that it is largely the small type of shop which most obstinately declines to enter an association. The Report added,

> but it does not follow that those would be the least efficient or the least useful. A small shop may be operated on as low a basis of overhead costs as a large shop, and yet by virtue of greater financial resources and of greater range of goods traded in, the latter may be able by price-cutting to ruin the former.

The Report apparently alluded here to the case of department stores against small independent retailers, of which we have spoken previously. The Report did not mention, however, the case (probably no less general) in which the small shopkeeper by his relative inefficiency is outrun by the larger competitor, and would thus be precisely the type of retailer to seek price-maintenance under the shelter of an association. Indeed, if the small shopkeeper is no less efficient than the larger enterprise, why should he find it particularly necessary to adhere to price-maintenance and particularly to big margins ? Unfortunately the Report did not supply the necessary documentary proofs for its theoretical assertions. Such " proofs " would require a close scrutiny into the so-called " efficiency " of the retailer. Without such scrutiny, the term " efficiency " is vague. Is the less efficient shopkeeper the one who cannot meet modern requirements of the trade—as for instance the less hygienic butcher or hairdresser ? Is the

[1] Cf. *Milling*, 13 Jan. 1940, p. 24. The difficulty had arisen from the fact that wheat had been bought at " high " prices, while flour was to be sold at the controlled one.

[2] Cf. Report, p. 25.

" efficient " one the man who by particular circumstances makes good profits in spite of such deficiencies? Should we judge efficiency by the measure of technical progress or by that of profit? Should we regard the small old-fashioned village carpenter-undertaker as less efficient than the urban funeral-director who in his trade association promotes the " progressive " undertaker? Should we protect the man who complains of the small kiosk and of the big store next door as the deathblow to his " efficiency " ? We may agree fully with Neal that there are not only large numbers, but large categories of " redundant " shops, but although he has had the vision to recognise their enormous variety, economically and sociologically,[1] he could not state definitely what criteria should be adopted if any attempt was made to reduce their number by planning. The somewhat painful process by which under free competition the " inefficient " or less " efficient " are weeded out, cannot be easily repeated in a planning system. Even under conditions as standardised as those in the U.S.A., such planned elimination has not yet even theoretically been attempted. It has never been tried by British retail trade associations. Nevertheless, the policy of trade associations as regards price-maintenance (both of their own produced merchandise or of merchandise plus service) is indubitably aimed at protecting their members within certain limits of their efficiency. This was made clear to the Committee on Restraint of Trade when it was told that " as a rule " and " in most trades " the percentage was fixed with reference to the " ordinary business ", not to that of the least efficient. The Committee did not deem it necessary to tell its readers what " ordinary " business actually meant, but it must have been clear to its economist members that under a regime of free competition the price level would be decided by those retailers having, in the long run, the lowest costs and the greatest personal efficiency and not by the " ordinary " ones which must be expected to have higher costs of production and less promising opportunities of sale or re-sale. The object of guilds was always to protect the " ordinary " business. They did not want to encourage and bolster up the entirely inefficient, but their policy assuredly differed from the rule under free competition where the cheapest producer defined the price level. The guilds strove to modify the painful process of price reduction; this also has been the object of modern industrial cartels; it is, as the Report on Restraint of Trade unintentionally confirms, the object of quasi-monopolist retail trade associations.

[1] Cf. Neal, loc. cit., pp. 5–9 and 188–9.

CHAPTER 12

RETAIL PRICE MAINTENANCE AND SUPPLIERS

The profits of the farmer, of the manufacturer, of the merchant, and retailer, are all drawn from the price of the goods which the two first produce, and the two last buy and sell.

ADAM SMITH, *Wealth of Nations*, Bk. II.

THE simple formula by which Adam Smith thought to exhaust the price relationship between manufacturers and retailers—a formula which might have filled him with satisfaction in view of the multiplicity of regulations existing under corporation rule —is no longer true. Wherever manufacturers or wholesalers trade in price-marked branded goods, they have adopted to some extent a leadership not only over retail prices, but also over the margins to be observed by the re-sellers, thus regulating their gross profits on such goods. The system has not simplified the relationship between manufacturers and re-sellers for, as we have seen, neither manufacturers nor their associations, nor those of the retailers, have been able in general to draft comprehensive standards for such margins, which would guarantee an objectively-"fair" profit to every retailer. The manufacturer wavers between the Scylla of too high margins,[1] which are likely to attract undesired competitors to the trade and undermine the position of many existing retailers perhaps to his own disadvantage, and the Charybdis of too narrow margins, which might arouse dissatisfaction among re-sellers and their trade associations and drive them to prefer his competitors' goods. Conditions definitely vary from those existing with cartels. Cartel products are in general uniform ; their prices concern all members alike ; prices may be fixed and sale-quotas allotted for each member. In endeavouring to dominate price-fixing on the retail market, manufacturers may agree to certain price standards for their own individual products and to strong measures to keep up the price of branded goods in principle, but as regards consumers' acceptance manufacturers are left free and independent. No system of quota allocation has yet been introduced by manu-

[1] Also discounts, e.g. for sales in quantity, for cash payment, or for window displays made by the retailers.

facturers' associations in their agreements with re-sellers' trade organisations; no limitations are set on their individual advertising ventures; they sell their goods even under the price-fixing system, as the Committee on Restraint confirmed, "in more or less free competition with other manufacturers to the wholesale or retail trader".

The "planning" feature of cartelisation has thus been absent from manufacturers' dealings with retailers.[1] On the other hand, an element of planning and logical drafting of cost levels and margins could be regarded, if it existed, as a modification of the organisation of retail sale, which the adversaries of free competition have frequently denounced as being chaotic and anarchic. But far from cost-planning according to a comprehensive and objective formula, and from price-fixing on this basis, the action of the manufacturer as regards price and margin still rests upon very elastic and accidental notions, on traditional maxims and on "flair" for what the market will bear.[2] The Committee appeared to be well aware of the incompleteness of the system of price-fixation by manufacturers[3]:

> From the point of view of the manufacturer (as of the low cost distributor and of the consumer) it is certainly a disadvantage attaching to the price maintenance system that it cannot make allowance for differences in the selling costs of distributors. This circumstance may tend to produce a breakdown of the system.

Ten years have elapsed since this was written, but the system of price-maintenance and margin-fixing does not appear to have lost ground.

The Committee on Restraint of Trade, in its Report, made no attempt to analyse the manufacturers' viewpoint and motive in following this system. It accepted as self-evident the contention that where prices were to be fixed "the distributor's margin *must* be fixed" (italics are the author's). There is no *a priori*

[1] This, perhaps, was a source of some relief to the Committee on Restraint of Trade, which apparently preferred not to discover too many monopolist features in modern retail trade organisation.

[2] Cf. Report on Restraint of Trade, p. 16: "The evidence given before us was to the effect that it is exceptional for manufacturers formally to negotiate or to come to an agreement with the retailers as to the percentage of profit to be allocated to them. The manufacturer may [!] consult particular [!] retailers, or he may rely upon his own shops or upon his own travellers for the knowledge of distributive costs which will enable him to gauge [!] what margin he should fix. We were given to understand that in many trades tradition plays a not unimportant part, though we were also told that percentages fixed by tradition are modified where it has become evident that selling costs have increased or diminished."

[3] Ib., pp. 15-16.

reason for this. If a manufacturer labels a branded article at a shilling and sells it to the retailer for eightpence, the *a priori* assumption is that it would be immaterial to him whether a retailer sold it at elevenpence or 1*s.* 2*d.* If such a retailer were of the transitory type, using his article as a loss-leader, without permanent success in his business, this kind of cutting would not seriously affect the rank-and-file of price-maintaining shops. If however the manufacturer comes to the conclusion that the margin was exaggerated, he might well reduce the re-sale price without in the least reducing his profits; he might reduce the price to 11*d.*, which would still leave the same profit to the "cutting" retailer. This is no mere "theory". It has, for instance, been recognised by confectionery manufacturers: shops in the middle of a city, with a high rate of turnover, can distribute on a substantially lower margin than the usual one of $33\frac{1}{3}\%$ which manufacturers allow. The leading chocolate manufacturers informed the Committee on Restraint of Trade that in London they made no attempt to enforce the prices which they asked retailers to charge for their products.[1] Similarly, the *Manchester Guardian Commercial* recently reported in an article on the organisation of sweet confectioners that it was suggested by a "man in the retail trade" that there were certain "cut-price districts" where there was on the part of the manufacturers "a disposition to tolerate cutting".[2] This shows that where the cutting of prices—or readiness by retailers to accept a smaller margin than the "official" one—has been recognised as due to certain normal conditions of sale, being the consequence of the location of certain groups of outlets, the manufacturers have not insisted that prices "must" be kept.[3] These manufacturers presumably consider that lower prices, without hurting their own margin of gross profit, might further increase sales in thickly populated town districts to their own ultimate advantage.[4]

[1] Cf. loc. cit., p. 16.

[2] Cf. *Manchester Guardian Commercial*, 5 Aug. 1938, p. 130.

[3] Cf. also *Evening Standard*, 17 March 1939: "The 'Big Five'—Cadbury's, Fry's, Rowntree's, Terry's and Nestlé's—and some others, take a strict line. They will not supply retailers who cut their prices, though some of them have a lower standard price for London than for other areas."

[4] In contrast to trade associations' practice, the Co-operative Wholesale Society does not in general impose fixed prices upon retail societies, and where it does seek to exercise pressure it suggests maximum prices instead of maintaining minimum ones. In place of the "national" price, societies are free to vary the retail price of standardised goods in accordance with local costs of distribution. In general the prices finally established for such products tend to be below the prices of their nationally advertised and price-maintained competitors. Cf. Henry Smith, loc. cit., p. 59.

It may well be asked why such an attitude has not been generally adopted where price-cutting became rampant, and why, on the contrary, the interests of manufacturers and manufacturers' associations have been predominantly interpreted as being against any such cutting.

Some explanation is offered by Cunliffe L. Bolling, who states that

> if price cutting amongst retailers brings about a universal reduction in the retail price of the manufacturer's goods, that reduction must be followed sooner or later by a reduction in his own prices.[1]

But this cannot be accepted. By no means all manufacturers are so shortsighted that they cannot see that a reduction in the price level of their goods might lead to increased consumption and thence be to their ultimate advantage. On the contrary, " the most part of manufacturers are convinced that the volume of their sales will be greater, the lower the final price at which the public can buy their articles " ; [2] such conviction is diametrically opposed to an obstinate adherence to some fixed-price levels, especially if the price reductions could be effected simply by cutting down the retailers' margin and not the manufacturer's gross profit. Even where it could be argued that " a carefully nurtured reputation may be destroyed through discriminating price cutting ",[3] this observation is still valid. Some customers may become suspicious about the quality of the article when they see it sold at a lower price than they paid before ; they may suspect that its qualities were over-advertised, and that consequently the price fixed originally could not be sustained. Other consumers, however, may think the opposite ; having tested the efficiency of the article in question they may welcome the reduction in price, which encourages them further to switch from the unbranded article to the branded " quality ". A famous and much-favoured brand of packed soap flakes will not be suspected of having been lowered in quality if the price is reduced from sixpence to fivepence ; on the contrary, many marginal housewives will change over from the loose article if they can buy the packed one almost as cheaply. We may agree with Bolling when he claims that

> if Jones, the price-cutting retailer of Castlepool, makes a point of selling a certain manufacturer's goods at a price that shows little

[1] Cf. Bolling, loc. cit., pp. 106–7.
[2] Cf. Plant, " Proprietary Articles ", in *Some Modern Business Problems*, 1937, p. 322.
[3] See Henry Smith, p. 59.

profit, none of the retailers in Castlepool will stock that manufacturer's goods if they can avoid doing so.[1]

Such a practice may certainly, to use the words of the Board of Trade Committee, " antagonise the retail trade ". But it does not explain the position of manufacturers who should certainly not in principle disapprove of the retailer with " little profit " as long as the retailer's policy does not diminish their profits. Such diminution is most unlikely, for the lower price will expand sales to the unquestioned advantage of the manufacturer, who thus sells more articles at the same gross profit per article.

Despite such considerations, as Professor Plant observes again and again,

> manufacturers of branded goods have generally arrived at a marketing policy which endeavours to impose a rigid uniformity of final selling price over a vast area,

and he exclaims with some justified disappointment,

> Can it really be in the interests of manufacturers to insist that no matter what reductions in the cost of distribution an efficient retailer may introduce, he shall not be allowed to benefit either himself or the manufacturer or the consumers by lowering his prices in order to increase his sales ? [2]

To confirm his doubts of the expediency, even from the manufacturers' point of view, of rigid enforcement of fixed prices, Plant adduces the fact that during the recent depression manufacturers frequently made no serious attempt to stop price-cutting, and that " those who abstained saw their business expand in consequence ".[3] He might have observed, however, that depressions have never been suitable periods for price enforcement, as the history of cartels and trusts has taught us. It may have been this reason and no other wisdom which for some time led to a relaxation of the rigid practice of price enforcement.

The fundamental motive for such policy appears to lie in another direction. We have shown that in many cases a fall in price may not hurt the manufacturer, if such a reduction simply means a lowering of the retailer's margin. But if a retailer is satisfied to lower his margin from $33\frac{1}{3}\%$ to say 25%, why should not the manufacturer lower the branded price accordingly and make the same gross profit augmented by a larger prospective

[1] Cf. Bolling, loc. cit., p. 106.
[2] Cf. Plant, loc. cit., pp. 322–3.
[3] Cf. ib., p. 328.

turnover? The answer to this question should clarify the whole problem. *Professor Plant, posing his justified query, appears* to have overlooked the practical fact that it is not, as he seems to assume, the "efficient" (i.e. the low-cost) retailer who determines the decision of such manufacturers. The majority of traders in every branch of retailing must be assumed to be below the really "efficient", in Plant's sense—i.e. the distributor who is able to sell at a profit at lower margins than prescribed. There is also a minority of distributors who are below the ordinary average; among them are what have been described as the "dabblers" and the great number of shopkeepers who have little knowledge of accounting, whose accounts are in many cases a reluctant concession to Inland Revenue requirements rather than a means of controlling business and eliminating unprofitable sections of turnover.[1] Manufacturers fixing prices and margins view the latter type with anxiety, for they represent a constant danger of indiscriminate, though temporary, price-cutting; they are certainly in the minority of traders in the particular group, so their turnover, at reduced prices, cannot be expected to increase so much as to be of real significance when compared with the far bigger aggregate turnover of the ordinary majority retailer. The first type—the most efficient retailers, whose costs of distribution allow a permanent reduction—are again in the minority, not only as regards numbers, but also as regards their aggregate turnover. Manufacturers therefore, from a very comprehensible commercial viewpoint, refrain from agreeing to price-cutting, except where such price-cutting (as in the example given) applies to a very large sector of the turnover, either by circumstances of area, or of general depression conditions. The manufacturer must be most reluctant to give way either to the more efficient retailer, whom Professor Plant has in mind, or to the casual price-cutter. If, for instance, the manufacturer in a theoretical case reduced the margin of a certain article from fourpence on the shilling retail price to threepence, the article now to be sold at elevenpence, because some reputable retailers could make a profit on such margin, in a very short time he would have to meet the claims of the large majority of the distributors asking him to make the buying price sevenpence instead of eightpence, as otherwise they would not be able to continue the profitable sale of the article. So if the manufacturer reduced the labelled price of his article from a shilling to elevenpence,

[1] Cf. a very suggestive article in the *Manchester Guardian Commercial*, "Questions at Issue in Retail Distribution", 26 May 1939.

following the line of the efficient traders, he would now make a clear loss if he could only get sevenpence instead of eightpence from retailers.

From this angle, the manufacturer or his association must protect the ordinary retailer with average costs, a fact which, as we have seen, was accepted by the Committee on Restraint of Trade without being subjected to closer scrutiny. This explains the fundamental principle upon which the price policy of manufacturers and of retail trade associations acting in agreement with them or independently must rest. This is the basic principle underlying all cartels—the aim of protecting the large mass of members, in order to avoid making the costs of the most efficient the basis for the calculation. This principle is the foundation of combination and association. If this principle cannot be maintained, the existence of the cartel is endangered.[1] The "ordinary" or, as it is sometimes called, the "reasonable" margin—that is, the margin sufficient to give a profit to the averagely efficient distributor—remains the guiding principle of retail trade associations.[2] At this point, for every trade association, the question of the "surplus" shop becomes of fundamental importance. If there is genuine overcrowding, the task of maintaining an average line of profitable margins becomes increasingly difficult, and the object of repressing the competition of the more efficient in favour of the rank-and-file of the "guild" encounters more obstacles. In cartels, these conditions are reflected in the struggle for quotas; in retail associations no such quotas exist, and the position becomes even more delicate. It then becomes the aim of the retail associations to stem the flow of newcomers by special action.

The difference between the price-fixing power of trade associations in which costs of production are more or less uniform, and of those in which because of some specialisation this is not the case, is very marked, and is exemplified by the struggle which sometimes meets the inauguration of price-fixing. If the "ordinary" manufacturer can be classified in some way or other, agreements with the retail trade are more easily reached than where such conditions are lacking. The ordinary trade

[1] Cf. the breakdown of the first English coal cartel in the North, the Newcastle Vend, in 1844; Hermann Levy, *Monopolies, Cartels and Trusts*, 1927, pp. 137 and 162.

[2] Cf. *Manchester Guardian Commercial*, 2 Sept. 1938: "Although the Proprietary Articles Trade Association satisfies itself, before listing a product, that the wholesale and retail margins are reasonable, its real purpose is to protect the price level, and thus to ensure that a proprietary article is sold at an uniform price."

seeks protection; the specialised and individual maker relies upon himself.[1]

The "protection" of the small ordinary (and also less efficient) shopkeeper has become even more urgent for manufacturers and their associations since the multiple shop development began. To secure what is considered a "reasonable" margin to the average independent retailer may mean supporting a distributor who is potentially valuable to the manufacturer, if he feels himself endangered by the multiple's own production of goods. Bolling correctly observes[2]:

> It is obviously to the advantage of the manufacturers to assist small shopkeepers in their fight with the multiple shop companies, because if the main retail business of the country passed into the hands of a few multiple shop companies, these companies would have a very powerful monopoly and would be able to dictate terms and prices to the manufacturers.

At the same time, the existence of retail trade associations endeavouring to maintain prices and margins for their "ordinary" members with average costs necessarily implies that the most efficient retailers' efforts to reduce their costs find no expression in the prices of branded goods. Price-maintenance is dictated by the interest of the rank-and-file; the driving power of the most efficient is cunningly neutralised.

The retail trade association represents a means whereby the manufacturer (or his association) may complete the process of price-maintenance. It represents the last necessary step to ensure that the creating of consumers' insistence by huge advertising and other expenses is not frustrated by letting such manufacturers loose upon an unregulated market overridden by competition of distributors.

The producer of branded and price-maintained goods is a quasi-monopolist. He may share his monopoly profits with the retailer,

[1] It was reported in 1939, for example, that the Motor Trade Association was willing to introduce price protection, including the control of second-hand vehicle allowance prices, if certain conditions were fulfilled; the Society of Motor Manufacturers and Traders in co-operation with the Motor Agents' Association was compiling a register of commercial vehicle dealers in order to request certain qualifications, etc. These endeavours were very promising as long as only the makers and distributors of so-called popular brands were concerned. It was reported that these were ready for "planning", that they had a well-organised selling plan, with distributors, dealers, standardised agreements and discounts, sales aids, replacement unit schemes, and so on. The difficulty arose with the makers of the so-called "heavies"—that is, cars of a better and more expensive type—who believed they fared better by relying upon their own sales administration. Cf. *Manchester Guardian Commercial*, 24 March 1939.

[2] Cf. Bolling, loc. cit., p. 231.

> thus widening the retail margin in the trade concerned, and, by allowing a smaller investment on stocks to provide a livelihood, increase the number of retailers. Or he may in part derive his monopoly profit from the retailer, thus narrowing the retail margin and either tending to reduce the number of small retail outlets, or, where the retailer is in a position to recoup himself, causing the distribution of his product to be subsidised out of widened retail margins on the other goods handled by the retailer,

writes Henry Smith.[1]

> . . . the manufacturer will not consent to a policy which would lessen the total demand for his product in order to provide monopoly profits for established retailers, unless he were able to augment his earnings by a share in monopoly profits (which via retail prices—the price for this co-operation—he can sometimes do).[2]

Bolling uses less erudite language to express the same thing:

> Powerful manufacturers have obtained a stranglehold over the distributors, and use this strength to prevent the distributors from dealing in the goods manufactured by small competitors.[3]

Manufacturers are in fact inclined to allow retailers a well-defined share in their quasi-monopolist profits. This reaches its peak when retail trade associations embark upon price-maintenance and when manufacturers' organisations can be connected with them. This is the main present significance of retail trade associations. Unless they have their origin in the organisational needs of retail trade, they represent an important—and often the final—link in industrial combination.

This may also serve as an answer to the question which Professor Plant poses at the end of his essay:

> Is it, therefore, not timely to query further, for each type of proprietary article, the necessity for stating retail prices in national advertisement as a condition for successful publicity? If that were deemed not to be essential for the development of "consumer preference", one at least of the principal reasons for retail price-fixing would have disappeared . . . there are cogent reasons for the belief that public confidence in proprietary articles depends far more upon the effectiveness of the steps taken by the brander to implement his guarantee than upon elaborate attempts to prevent progressive traders from expanding their sales and their service by sharing with the public the benefits from their improvements in the system of distribution.[4]

[1] Cf. Smith, loc. cit., p. 77.
[2] Cf. ib., p. 79.
[3] Loc. cit., p. 267.
[4] Cf. Plant, loc. cit., p. 336.

The answer is that the quasi-monopoly of trade associations is directed to a decisive protection of their average members; to business men it seems more profitable to protect the rank-and-file by price-maintenance than simply to help "progressive traders".

The danger to price-maintenance comes from quite another quarter, as we have seen. In granting ample margins to the rank-and-file, the associations may run the risk of increased competition by new entrants. A vicious spiral may in fact develop: associations are formed to secure profitable and stable margins; this attracts newcomers into the trade; an intensified scramble for turnover ensues; new conflicts arise; this necessitates new concessions; new attempts are made to strengthen the monopoly, and so on. An "imperfection of the markets" may thus have been created by the trade association; the "excessive" number of shops may, after all, not be the cause of retail trade cartelisation, but its effect.[1] We shall see later how associations try to eliminate this latent danger to their undisturbed existence.

The Report on Restraint of Trade assured its readers that so far "not a dangerous condition approaching a monopoly" had been created by the trade associations' policy of price-maintenance. But, in its conclusions, the Report was compelled to draw attention in a general way to the fact that "support" might be given by the price maintenance system to monopolistic combinations. Yet the Committee did not think it necessary to investigate the intermediate stages of monopoly. The Report had come to the conclusion that the retailer might be "prevented from selling to the public at a lower price even *though he can afford to do so*", but it declared that it did not consider it "unreasonable or contrary to the public interest for the exceptionally efficient or exceptionally well-placed retailer to obtain branded goods only on condition that he undertakes to observe the uniform price fixed by the manufacturer in the interests of his trade". The expressions "unreasonable" and "public interest" show the same degree of vagueness which unfortunately characterises this Report. The point that price-fixing presented a differential rent to the better located retailer, merely by virtue of his possession of a monopoly site, was ignored; the consumer's interest was apparently not included in the "public interest"; the "reasonableness" of the fixed price was not analysed by comparing the prices fixed by some retail association with either the costs of production or with the price level which would prevail under unlimited competition. The Committee failed to

[1] Cf. Henry Smith, loc. cit., pp. 130 and 150.

understand that the readers of its Report (except perhaps members of trade associations) might be concerned much less with the finding that the policies adopted were " not unreasonable " than with the reasons why they were " not unreasonable ". No such reasons were given. The Report told its readers that

> it was stated that consumers are very ready to buy price-maintained goods provided they regard the price as reasonable . . . the price-maintenance system, we were told, tends to promote an atmosphere of harmony between the retailer and his customer and to make selling easy and expeditious.[1]

Having made it clear that no " dangerous " monopoly had yet arisen, the Committee was apparently anxious to give an equally clean bill of health to quasi-monopoly, and to emphasise its " harmonious " potentialities. But the Committee never got to grips with the problem of analysing the new distributive system; instead it resorted to evasive and indistinct conceptions, never attempting to show to the public that the system of price and margin maintenance, whatever its results in individual cases, has nothing whatever in common with the system known as free competition.

[1] Cf. Report, pp. 24 and 10.

PART IV

THE ENFORCEMENT OF PRICE MAINTENANCE

CHAPTER 13

PROTECTED LISTS AND EXCLUSIVE AGREEMENTS

> It appears to us that the maintenance of freedom of contract and the right to combine is as much a matter of public interest in the sphere of commerce as it is in that of employment. It is inevitable that this freedom should lead to hardship in individual cases.
>
> Report on Restraint of Trade, 1931.

WE have hitherto discussed the aims and principles upon which price policy depends, wherever the former conditions of unregulated competition are replaced by price-fixing agreed between members of trade associations. Price-maintenance may, of course, be effected between single retailers and single manufacturers; it may be carried out by agreement between a cartel and single retailers; but the main and most general case is the agreement either binding members of a trade association and of interlocking trade associations, or creating bilateral arrangements between retailers' and suppliers' associations. By what measures is this price-maintenance policy generally made effective? Apart from indirect measures, aimed at influencing prices by restricting the number of competitors, there are two main types of measure—agreements designed to bind members of the association to the observance of fixed prices and margins, and action against the infringement of such price-maintenance by price-cutters.

The first category involves trade practices which have become characteristic of trade associations. They are explained by the need to "enforce" the observance of agreements. Such practices may well exist in principle before the formation of any trade association becomes practicable. As the Report on Restraint of Trade explained, it is quite normal for the single manufacturer to try to enforce the maintenance of his prescribed prices "first by persuasion, second by threat of withholding supplies, and third by actual withholding of supplies".[1] The Report also

[1] Cf. Report on Restraint of Trade, p. 11.

stressed the fact that the "difficulties encountered by individual manufacturers seeking to maintain resale prices" have greatly stimulated the formation of trade associations. It is quite evident that individual manufacturers can use the "withholding" threat only where they feel themselves strong enough to do so. Where retailers' insistence is not keen enough to make withholding of supplies an effective sanction, the association principle as a collective expedient becomes increasingly urgent to manufacturers. If no association exists, the individual retailer may be expected to rely upon other sources of merchandise if he wishes to avoid subjugation to the will of a single manufacturer, however important he may be. Such evasion becomes increasingly difficult if manufacturers associate for the same purpose of upholding their sale rules, or if the individual retailer becomes a member of an association which lays down rules to be observed. The single retailer may then feel that his independence has been restricted, but he may on the other hand have gained the advantage of some protection against undercutting competitors. He may feel that he has not gained any preference for himself, but that he has become protected against any preference to be granted to others.[1] Wherever trade associations have been formed, however, it has become evident that to secure observance of price and margin regulations mere *esprit de corps* is not sufficient. The entire procedure of sale and resale has therefore become subject to a whole code of regulations, supported by the sanction of fines and other penalties. This applies most strikingly to associations which have close links with manufacturers or their associations, although such trade practices are in no way excluded by other retail associations.

We have already called attention to the important differences between retail trade associations and industrial cartels. One of the most important of these is that whereas a cartel usually deals with a more or less uniform product—steel or salt or sewing cotton or rails—the goods offered by single manufacturers supplying the retail trade are exceedingly diverse. The manufacturer may not be in a position to apply price regulations to all his products; he may produce branded and unbranded goods, or perhaps branded goods for which rigid price-fixing does not seem practicable. We have seen also, however, that in general trade associations are not designed to dictate specific price levels to their members; they limit their non-competitive functions to fixing margins and to the requirement that labelled minimum or

[1] Just as in the case of a nation which enjoys a most-favoured-nation clause.

maximum prices must be adhered to by their retail members. This again distinguishes their position from that of cartels, which may fix the price of pig iron or coal or rails or tubes for all their members according to certain specifications.

When a trade association develops into a really important body, concerned with trade in a very wide range of commodities, the so-called "protected list" will be adopted, as in the Proprietary Articles Trade Association.[1] Once on the list the article enjoys price protection. A manufacturer who wishes to have his products placed upon the Protected List joins the Manufacturers' Section and submits his proposals to the Secretary, stating the proposed prices. The application is considered by the Executive Committee, and provided that the prices show a sufficient margin of profit to retailers, the application is accepted and the article is placed on the Protected List. This is the groundwork which must be laid if the fixed price—the level of which is decided by the maker himself—is to enjoy "enforcement" by the association. Some 3,000 articles appear to-day on the P.A.T.A. Protected List.[2] The strength of the Association, as represented by the Protected List, is very great.

> The cutting of prices for patent medicines is exceedingly difficult in the face of the strength of bodies like the Proprietary Articles Association,

declared the Rt. Hon. A. V. Alexander before the Select Committee on Stamp Duties in 1937.[3] In other trades it appears that the mere imposition of a protected list is not always deemed a sufficient protection against price-cutting.[4] As long as an article is not obviously related to a trade association there may be under-

[1] Cf. p. 98 above.

[2] Cf. Report on Restraint of Trade, p. 12, and *Manchester Guardian Commercial*, 2 Sept. 1938.

[3] Cf. Report of the Select Committee on Stamp Duties, Minutes of Evidence, 1937, A. 1504, also Q. 1505: "In a great many cases it is absolutely precluded?" A. (the Rt. Hon. A. V. Alexander): Yes.

[4] The water-tight development of a protected list may take a considerable period. The Stationers' Association of Great Britain and Ireland has had this experience. Here the protected list covers a number of branded or otherwise identifiable stationery items in respect of which manufacturers, wholesalers and retailers have agreed to observe fixed retail prices. "The protected list is the means whereby it has been sought to apply the principle of price-maintenance, in a limited way, to the stationery trade," writes the *Manchester Guardian* on 15 July 1938. The paper adds: "While some success has been achieved, it is a fact that the Protected List has not been found entirely water-tight, and the association is at present embarrassed by complaints in regard to retail selling by certain wholesalers." To secure the admission of an item to the Protected List manufacturers must be members of the Stationers' Association and pay the appropriate fee.

cutting even by association members. The proposal is sometimes made, therefore, that manufacturers and retailers should collectively mark their goods with the letters of their association—in the manner of the C.W.S. design of the co-operative organisations—as for instance with a G.P.A. in the case of merchandise protected by the Grocers' Proprietary Articles Council.[1] The example of the tobacco trade [2] is sometimes adduced in that respect, and the system of complete registration of retailers and wholesalers suggested in order to stop all possible loopholes.[3] In the tobacco trade the system of price-maintenance is strengthened by the arrangement that every wholesaler and retailer is required to enter into an agreement with the Tobacco Trade Association (representing for this purpose the manufacturers) before supplies can be obtained. Each grade of the three classes of distributor has a distinctive form of agreement requiring the observance of price-maintenance terms and also covering a number of matters of trade practice.[4] The link between the organised retailers and the manufacturers, who are themselves tied down by agreements with the Tobacco Trade Association, appears here to be perfect. It is, of course, a great step forward towards complete quasi-monopolist organisation compared with that afforded by the protected list alone.

The issue of a register of dealers coupled with exclusive arrangements has always been the "ideal" of manufacturers' associations when dealing with retail trade associations. When in the Spring of 1940 the radio trade evolved its White List scheme,[5] one of its advantages was expected to be that "manufacturers who distribute through wholesalers pledge themselves as a separate group to impose an obligation on their distributors to confine their supplies to retailers on the registered list".[6] The car section of the Society of Motor Manufacturers and Traders issues a classified register of dealers, called the Blue Book; in this they are assisted by the Motor Agents' Association and the Motor Trade Association. The latter adheres strictly to the principle of granting terms to "trade members only".[7] The Electric Light Fittings Association supplies only through a recognised roll

[1] Cf. J. T. Clark, "Here is a Cure for Cutting," in *Grocery*, Feb. 1940, p. 47.
[2] See p. 105 above.
[3] Cf. J. T. Clark in *Grocery*, loc. cit.: "In this case the manufacturers have taken a strong line . . . and their customers both wholesale and retail registered."
[4] Cf. *Manchester Guardian Commercial*, 29 July 1938.
[5] See p. 48 above.
[6] Cf. *Electrical Trading*, Feb. 1940.
[7] Cf. *Manchester Guardian Commercial*, 24 March 1939.

of wholesalers which now covers nearly every important firm.[1] We have described earlier [2] certain arrangements relating to the trade in electric lamps, called "signing up". The dealer is not in all circumstances tied to buy ring lamps only, but if he wishes to get the bigger discount he must "sign up" and not sell or display any others. The Cable Makers' Association offers members "an exclusive buyer's agreement" which carries an extra discount of 10%, but requires purchasers to take all their requirements from its members.[3]

The British public first became acquainted with the system of exclusive agreements or "tying clauses" when the Report on Trusts of 1919 gave an account of its working in the preceding twenty years in the boot and shoe machinery industry.[4] Under the system a machine was not sold but leased for a term of years; the special condition attached to such lease was that where there were machines of other makes in the factory the leased machine should always have preference over the others when the work was short; that no other machines of the kind should be obtained from anyone other than the lessors; that the preceding and subsequent operations on any shoes placed on the leased machine should be done by machines obtained from the lessors. Such conditions could be imposed because the leasing firm held patents for certain machines and devices. The origin of the system (also in the case of boot and shoe machinery) is to be found in the U.S.A. In the oil industry, for instance, retail outlets have been partly controlled through ownership and control by manufacturers and partly by "lease and license" or "lease and agency agreements". The manufacturer leased the filling stations from

[1] Cf. *Electrical Trading*, Jan. 1940, p. 27. [2] See above p. 45.

[3] Cf. *Manchester Guardian Commercial*, 17 June 1938.

A very interesting example of a complete "exclusive agreement" is to be found in the German Viscose Rayon Syndicate. The syndicate requires that none of its members should sell outside the syndicate any artificial silk which has been manufactured by its members. Any individual selling is excluded. In so far as rayon goes to dealers, these are under the obligation to sell it exclusively to the manufacturers in the following stages of production and in no circumstances to other dealers. When buying rayon from dealers, buyers must satisfy themselves that these sales are authorised by the Sales Bureau of the syndicate. Foreign members of the syndicate have entered into an obligation to insert a condition into all agreements concerning the sale of rayon outside Germany, that it is not to be transported into Germany. The Bureau claims damages in cases where this obligation is neglected. "Every buyer, therefore, outside the Bureau," so wrote the Bureau in an official communication, "who buys rayon from a spinner belonging to the Sales Bureau, must be aware that the above-mentioned obligations have been broken and that goods so acquired originate from a breach of contract" (cf. *Mitteilungen des Kunstseideverkaufsbüro*, Nov. 1933; also Levy, *Industrial Germany*, pp. 149–50).

[4] Cf. Report on Trusts, p. 27.

the owner; the manufacturer then licensed the owner to operate it to sell only the products of the manufacturer upon terms fixed in a sales agreement. The link from exclusive dealing to price-maintenance then became complete.

> Manufacturers [writes A. R. Burns in his survey of industrial combination [1]] seek to prevent the retailer from handling rival products by making exclusive contracts; they seek to control his price policy in the handling of their products through attempts to maintain the resale prices of products.

This becomes the aim of manufacturers whenever they combine in sale syndicates. Retailers' associations may find them useful for their own trade policy, for if the merchandise in question retains a certain quasi-monopoly value, the fact that manufacturers are bound to sell to members of the retail association weakens outsiders.[2] Even where retail traders are not dependent upon manufacturers, but sell their own goods together with certain services, the system of exclusive agreements may nevertheless be adopted. If such services contain some monopoly value, for example, they may be exploited by exclusive agreements with the object of bringing outsiders into line with the association's price policy. The policy of trade associations in the undertakers' business has for a long time been to restrict the supply of certain requisites to members of the association only. This relates mainly to the hiring of carriages and hearses; the big undertakings which combine the funeral service, including the supply of coffins, etc., with the ownership of carriages, modern motor hearses, etc., are needed by smaller "pure" undertakings which do not own this indispensable equipment. A possibility thus presents itself of urging the smaller, uncombined undertakings to join the association and by so doing to conform with its price policy.[3] In the hairdressing trade, competition by those members

[1] Cf. Burns, loc. cit., p. 426.

[2] A very comprehensive scheme of contract between manufacturers and dealers was drafted in 1938 by the National Association of Cycle and Motor Cycle Traders and the manufacturers' organisation, the British Cycle and Motor Cycle Manufacturers' and Traders' Union. Manufacturers gave undertakings that they would (*a*) stop supplies to any factor or distributor supplying the manufacturer's goods to non-bona fide traders, (*b*) treat each branch of a multiple store as an individual concern, (*c*) grant supplies to co-operative societies only if such supplies were placed on the "ex-dividend list", and (*d*) refuse to supply clothing clubs, employee stores, etc. (cf. *Manchester Guardian Commercial*, 23 Sept. 1938).

[3] Section VIII of the Rules of the National Association of Funeral Directors, London Area Federation, 1936, reads as follows:

> No member of the Association trading in the London area shall either directly or indirectly hire from or supply to any Funeral Director, Funeral

of the trade who undercut the retail prices of the goods they sell in connection with their services is much lamented. For twelve years a Hairdressers' Wholesale Association has been in existence and operates a very definite price-maintenance scheme, but no such organisation existed until September 1940 in the retail trade of hairdressers, although many hairdressers' associations are in existence and a special organisation called the National Council of Action had been active for some three years determined to eliminate price-cutting and "attendant evils".[1] A new organisation called the Retail Hairdressers' Federation was formed in September 1940. One of the objects of this new body was to stop supplies to cut-price hairdressers "by agreement" with wholesalers.

There is one very formidable obstacle to trade associations' progress in buttressing price-maintenance by protected lists and exclusive agreements—that is, the co-operative societies. The difficulty arises in connection with the dividends periodically distributed by the co-operative societies to their customers. Such dividends may easily be regarded as merely another form of price reduction wherever the price is a fixed and labelled one on a branded article not produced by the society itself. Opinions differ about such dividends; some witnesses before the Board of Trade Committee expressed the view that the dividend was akin in its origin to the profit of a joint-stock company and differed from a profit only in its method of distribution; others regarded its relation to the price as its essential feature, in which case, compared with other traders, the dividend is a uniform rebate indistinguishable from price-cutting.[2] Theoretically there does not appear to be much difficulty about it. If the original conception of the co-operative retail society still holds good, it is simply a combination of consumers for their common benefit to

Director Carriage Master (Horse or Motor), Carriage Master (Horse or Motor), Job Master (Horse or Motor), any Hearse, or horse-drawn carriage for use at the funeral, or assist in any other way such person or persons who is (or are) not a Member or Members of this Association.

Cf. Sir Arnold Wilson and Prof. Hermann Levy, *Burial Reform and Funeral Costs*, 1938, pp. 156 and 228; for an interesting action which arose in respect of similar restrictions, cf. ib. pp. 204–9. The arrangements would have acquired a much wider sphere of influence if the Funeral Directors Registration Bill, sponsored by Lord Horder, had been enacted; that registration was attempted by groups of the trade already organised conforms with our previous remarks about registration as the ultimate device of complete price-maintenance; as to existing price lists, cf. Wilson and Levy, pp. 155–6. The Debate on Lord Horder's bill was on 2 June 1938 (cf. Parliamentary Debates, House of Lords, Vol. 109, Nr. 70).

[1] Cf. *The Hair Dresser and Beauty Trade*, 27 Sept. 1940.

[2] Cf. Report on Restraint of Trade, pp. 31–3 and also p. 10.

eliminate the profits of re-sale as far as possible. For this purpose, the society adheres to a strict policy of following markets ;

> it appears to be true that in general the policy of the co-operative movement in respect of retail prices is to " charge what the traffic will bear ", except in those cases where the resulting profits are so large as to offend their sense of what is right and fair.[1]

Their position is similar in some respects to that of certain accident insurance companies which may charge a certain rate of premium based upon certain experience rates, and distribute yearly bonuses according to the actual profit-and-loss accounts. The co-operative societies' price level is therefore by no means particularly low ; Mr. J. A. Hough found on investigating the matter that in many districts the prices of the co-operative societies were " the same or slightly higher than private trade prices ".[2] The " divi ", which is regarded as a deferred price reduction, is merely the distribution of the saving of the private retailer's net profit, or parts of it. These dividends bear no direct relation to the price of the individual article sold by the co-operative society. On the contrary, smaller gross profits on one article might be balanced by larger profits on others in their effect upon periodical dividends. It is a matter of policy and administration on the part of the co-operative societies to maintain a certain standard of dividend, and it would be quite impossible to allocate to price-maintained commodities a certain rate of dividend which could be claimed by trade associations to be the " cut " in prices.[3] The Report on Restraint of Trade again showed some reluctance to give a definite opinion in the matter ; but it rightly referred to the fact that " the payment of a flat rate of dividend on an aggregate account is not infrequent among other distributors than co-operative societies ".[4] We have already referred to the matter of quantity discounts. The National Union of Retail Tobacconists' Prices Committee sets out the terms which appear desirable as regards margins, and these terms are based on certain minimum quantities. They are, apart from settlement discounts, quantity

[1] Cf. Smith, loc. cit., p. 61.

[2] Cf. J. A. Hough, *Dividend and Co-operative Purchases*, 1935, pp. 111 sqq.

[3] Cf. Hough, loc. cit. : " *In no individual instance was the margin of difference between co-operative prices and the private trade prices in a selected area found to be equal to the rate of dividend per £ sales paid by the co-operative society operating in that area. This proves that any slightly higher prices that may be charged in some instances by co-operative societies do not pay for the whole dividend, but it is highly probable that some part of the dividend is accounted for by slightly higher prices, particularly in the case of societies paying a high rate of dividend.*" Cf. also Henry Smith, loc. cit., p. 56.

[4] Loc. cit., p. 31.

rebates and bonuses.[1] The National Federation of Ironmongers does not yet appear to have prevented retailers from buying direct from manufacturers usually on the basis of a certain minimum quantity carrying a higher discount.[2] The "fair trading" policy in the electrical equipment trade does not exclude the provision, in addition to discounts of 25% to a supply authority, an electrical contractor or an electrical dealer, of special quantity-buying terms based on the size of the individual order or purchases over a period.[3] Such rules could equally well be regarded as some sort of indirect price-cutting.

> It is not fair that customers who occasionally buy a large quantity of trader's goods as an investment or speculation should receive the same privileges as customers who take the same quantity at frequent intervals, thus forming regular channels for the distribution of the trader's merchandise,

writes Bolling about quantity discounts.[4] Some retail trade associations may hold this view, but they have not found it possible effectively to oppose the traditional system. In any case, such discounts have probably been less attacked as an obstruction to the enforcement of price-maintenance than the dividends of co-operative stores; the latter, indeed, have to bear the full brunt of such attacks.

It is rather pointless, perhaps, to decide the matter on grounds of strict economic logic. The fact will always remain that trade associations with price-fixing systems tend to disregard the non-profit making co-operative character of the societies and focus their attention upon the fact that the customer may, after all, get the branded and price-maintained article cheaper than he would get it from a regular retailer selling in conformity with protected lists. The fight is of long standing. It already existed when in the 'eighties the grocers took steps to modify the competition encountered through co-operative stores by "Traders' Defence" associations.[5] To-day the defence is rather on the side of the co-operative retail societies, as retail trade associations in combination with manufacturing associations have risen to a much more dominant position.[6]

[1] Cf. *Manchester Guardian Commercial*, 29 July 1938.
[2] Cf. ib., 22 July 1938. [3] Cf. ib., 17 July 1938.
[4] Cf. Bolling, loc. cit., p. 105.
[5] Cf. Rees, loc. cit., pp. 232–4.
[6] The attitude of the small shopkeeper is illustrated by the following letter to the *Evening Standard*: "Although cut-price shops are a menace to the small trader, their supplies of price-maintained goods are limited and costly to procure. The greatest menace is the co-operative society. No small trader

The attitude of manufacturers or their associations is not altogether the same. When the Report on Restraint of Trade was published it was stated that suppliers in the grocery, tobacco, confectionery, stationery, motor and cycle trades did not regard the payment of dividends by the co-operatives as equivalent to price-cutting; at any rate they were prepared to sell branded goods to co-operative societies provided that the latter charged the specific price across the counter. Suppliers in the drug, photographic and gramophone trades, and producers of certain textile goods, on the other hand, do regard it as equivalent to price-cutting and are consequently disposed either to withhold supplies from co-operative societies altogether or to impose conditions designed to remove or counteract the objection. Such conditions take the form of insisting either that sales of the particular branded goods in question by the co-operative society shall not rank for dividend, or alternatively that the amount of dividend shall be added to the price charged across the counter in the first instance.[1]

It presumably remains one of the objects of trade associations to get the co-operative societies to relinquish their dividends upon branded-priced articles. Whether this can be achieved depends largely upon the strength of both sides in each case, in particular also upon the consumers' insistence on certain branded articles. More than ten years ago the London and Provincial Wholesale Newsagents' Associations passed resolutions to the effect that their members should not supply co-operative societies with newspapers, periodicals or magazines for resale. For a few societies, however, exceptions were made. The reasons, among others, for this action were that the association wished to avoid friction with the retail newsagents who are opposed to co-operative societies, and that objection was taken to the co-operative dividend as equivalent to price-cutting.[2] The movement was particularly strong, for the sale of newspapers and periodicals is important for small shops of all kinds; they combine with it the

minds competition in butter, bacon, etc., but in price-maintained goods it is different. Take the case of the tobacconist. If he gives his customer so much as a packet of book matches his supplies are cut off by the Tobacco Trade Associations. Yet a co-operative is allowed to open next door, receive supplies direct from the manufacturers, and return a dividend of approximately *1s. 6d.* in the £. Lately the co-operatives have put up a notice that the dividend is only returned to members, but as membership costs nothing this notice is absurd. The National Federation of Newsagents protects the small trader; why do not the Tobacco Trade Associations do the same?"

[1] Cf. Report, loc. cit., p. 10.

[2] Cf Report on Restraint of Trade, p. 21.

sale of cigarettes, tobacco, sweets, stationery goods; the turnover of this side of their business might indeed be decisive to their existence. The promise to keep out the co-operative societies is sometimes one of the attractions by which a new association is advertised; when the White List scheme was put forward in the radio business in 1940 it was expressly stated that "co-operative societies may be supplied providing they sign an undertaking not to allow dividends".[1] With the Proprietary Articles Trade Association, this policy goes back to so early a date as 1906; two rules define the position:

(1) That no industrial co-operative society shall be supplied with any article on the P.A.T.A. List, unless the society agrees not to sell below the minimum prices and that no bonus or dividend on the purchase money or rebate in cash or goods be given, unless the value of such bonus, etc., be charged to the customer in addition to the P.A.T.A. minimum price of the article.

(2) That the P.A.T.A. List shall consist only of those articles the proprietors of which agree to the foregoing conditions relating to co-operative societies.

It should not be overlooked, however, that these rules do not prevent co-operative societies from making profits from the sale of articles on a protected list; they are only prevented from paying dividends to their members in respect of such articles. The profits made on proprietary articles flow into the same reservoir as those made on articles for which customer-members are served directly with receipts for the future payment of dividends. The Report on Restraint aptly suggests that the profits made on non-dividend proprietary articles may even serve to increase the dividend on other articles.[2] Conditions in the milk trade confirm this observation. The Food Council pointed out in 1937 [3] that as the co-operative societies had the lowest cost of distribution, they were getting by the existence of minimum prices the highest profits in the milk retail trade. They could use such profits either for distribution of dividends or to reduce their prices for other goods not subject to price control. This conforms absolutely with what we have tried to point out in

[1] Cf. *Electrical Trading*, Jan. 1940, p. 27.

[2] Cf. Report on Restraint of Trade, pp. 31–2: "To this extent, and to the extent to which the societies are enabled to fix prices of non-maintained articles lower than they would otherwise do, it may be argued that they are able to compete more effectively in these trades and to draw to themselves a large share of the business"—an effect hardly contemplated by trade associations in their endeavour to stamp out dividends as being equivalent to price-cutting.

[3] Cf. *Costs and Profits of Retail Milk Distribution in Great Britain*, 1937.

regard to the differential rent accruing by fixed prices to the most efficient retailer; there is of course no difference in principle between the policy of a minimum retail milk price and that of branded price-maintained goods.[1]

The exclusive attitude against co-operative societies appears to be somewhat less marked when trade associations consider the latter as possible allies in fighting other cutters. In their fight against Kensitas, the annual conference of the National Union of Retail Tobacconists in 1940 praised certain efforts "in getting the co-operatives to give up selling Wix products". Apparently, at that time, co-operative societies joined the attempted boycott of these "cut-price" cigarettes.[2]

Another set of sales which may cut into trade associations' price-fixing, though not as important as those by co-operative societies, is represented by the supply of clubs and similar institutions.[3] This, for instance, accounts for the difficulties of price-fixing associative organisation in the sports and games equipment trade. Manufacturers in this branch cannot ignore the many outlets for their merchandise apart from sports dealers. These outlets cannot be effectively provided for by an agreement between manufacturers and retailers. This was the main cause of the breakdown of the scheme worked out in 1935 between the Federation of British Manufacturers of Sports and Games Equipment and the Federation of Sports Goods Distributors.[4] The idea of the retailers was to create an agreement by which as large a part as possible of the sports and games equipment trade should pass through the hands of the authentic retailers; the latter also had registration in their minds as an ultimate goal. But the manufacturers could not ignore the particular habits of the purchasing public in this trade[5]; manufacturers of bowls,

[1] The maximum milk price has sometimes been "undercut" by co-operative societies during the war, much to the lament of the distributors; cf. *The Milk Industry*, Feb. 1941, p. 55.

[2] Cf. *Tobacco*, 1 March 1940, p. 52, and ib., 1 Jan. 1940, p. 71.

[3] The supply to clubs at lower prices than those which retailers are expected to charge has to be distinguished from "club-trading" as aptly described by Neal, loc. cit., pp. 59–61. The latter may assume two forms: clubs into which a member pays weekly deposits, receiving interest on those deposits, and using both principal and interest at the end of the agreed period to make purchases at some specified shop or shops, or clubs in which the member may receive the goods he wants to buy before he has actually completed the payment for them. These arrangements are mainly devised as credit facilities for the poorer classes, the second type having much in common with the ordinary principles of hire-purchase trading.

[4] See above, p. 93.

[5] We follow here the very interesting description in the *Manchester Guardian Commercial*, 16 Sept. 1938.

for instance, are bound to seek the co-operation of groundsmen; suppliers of golf clubs and golf balls cannot do without the golf professionals, who are commercially organised in the Professional Golfers' Co-operative Society; then there is the Lawn Tennis Professionals' Association. Many schools trade in sports goods, and there are secretaries and honorary secretaries of athletic associations who have some interest in the sale of such merchandise. The manufacturers apparently did not wish to give up these valuable direct relations in favour of exclusive agreements with retailers' trade associations, in particular when certain immediate connections with clubs and professionals by single manufacturers would have been threatened. Manufacturers' "policy" as regards such connections varies widely; some subsidise prominent players; others seek the goodwill of club secretaries; others, again, make the maximum use of retailers. This extreme diversity of distributing outlets, with "irregular" outlets playing such an important part, frustrated the trade's associative efforts.

Another illustration of the difficulties created by clubs is to be found in the confectionery trade. The wholesale buying of confectionery by clubs "in opposition to the sweets retailer" formed a topic of discussion between the National Union of Retail Confectioners and the Manufacturing Confectioners' Alliance when the problem of "the maintenance of standard selling prices for the manufacturers, wholesaler and retailer" was debated [1]; it was urged that in future "forms of trading" should be prevented "which are unfair or invidious to the legitimate [*sic !*] retail trade." At a meeting of the Scottish Tobacco Trade Federation similarly, the direct sale by manufacturers to clubs and hospitals was condemned.[2] The protests of confectionery retailers also relate to "irregular" trading through school tuckshops and banks, offices and factory staffs,[3] but it is difficult to see how measures can be devised to stop such "irregularities" unless manufacturers are prepared not to support them. The latter may be willing to stop competition elsewhere, but they have shown little inclination to protect retailers or their associations from the effect of a direct trade which is much in favour with some suppliers. The least that can be expected is that the differential trade discounts granted by some manufacturers may be revised in favour of the genuine

[1] Cf. *Confectionery Journal*, 3 April 1940, pp. 117–18.
[2] Cf. *The Cigar and Tobacco World*, Feb. 1940, p. 99.
[3] Cf. *Manchester Guardian Commercial*, 5 Aug. 1938.

retailer [1]; even there, it should be remembered that in many cases the manufacturers' interest in direct selling to clubs, hospitals, sports associations, etc., is not solely a matter of business turnover; such customers have some value as an advertisement. For these reasons the manufacturer may insist on this practice and refuse to have it abolished because it is contrary to a protected list or exclusive agreements. Such endeavours, indeed, may stiffen the resistance of manufacturers against such systems of price-maintenance. It is regrettable that the Report on Restraint of Trade did not deal with this problem; the attempts to forestall the cheap supplies of clubs, staff organisations, hospitals, schools, and so on, by preventing direct trading with manufacturers should obviously be regarded as a limitation of free competition by quasi-monopolist means. They are significant among the special measures adopted or envisaged by retail trade associations to protect prices and margins, although in this case it cannot be claimed that such measures are necessary to fight the competition between fellow tradesmen, or between members of a trade association and traders outside it. [2]

[1] Bolling quotes, loc. cit., p. 105, that a manufacturer of strings for musical instruments might allow a discount of 10% to a professional musician, a discount of 20% to buyers for large orchestras, and a discount of 30% to shopkeepers who purchase strings for resale.

[2] During the Great War retail trade interests were anxious to see the supply to canteens reduced, for they regarded them as an infringement of their domain: cf. "Shopkeepers and Canteens" in *Confectionery News*, Dec. 1940; for complaints about club trading cf. also the *Baker and Confectioner*, 27 Dec. 1940. Cf. also *Grocers' Gazette*, 3 March 1941.

CHAPTER 14

ACTION AGAINST PRICE CUTTERS

Potentes ne tentes aemulari.[1]

PLAUTUS.

THE actual suppression of price-cutting is no easy matter. Protected lists, exclusive agreements, tying clauses may all be in force, and yet the " evil " may be rampant. In big industries with a relatively small number of competing firms and a range of commodities easily controlled, the breach of agreements is easier to detect than in the retail trade, where a trade association is confronted by an almost infinite number of articles and commodities which it is expected to protect. Before you hang a thief, you must catch him, but in this case you must know him before you can catch him. The trade competitors of a price-cutter may often be relied upon to furnish information and proofs, but if cutting is widespread such sources will not be exhaustive. Moreover, information must be available about the source, wholesale or retail, from which the cutter obtains his supply. This is often difficult, especially in trades such as the tobacco trade, where the channels of distribution are very numerous.[2] Again, manufacturers are sometimes accused of running with the hare and hunting with the hounds, and may seek to obscure an investigation; in such cases it is of little use to have discovered that some retailers have cut the prices if they happen to be outside the reach of the manufacturers' and retailers' associations.

These difficulties of detection have caused trade associations to set up a very comprehensive machinery of control. It is claimed that important successes have been scored. It was reported recently [3] that there were at one time 5,000 shops selling cigarettes at cut price; they are said to have been reduced to 200; "the big tobacco firms spent thousands to track down the cutters and to stop their supplies ". According to the same source, the main weapon used by the trade associations in their policing campaign against cutters is the use of " codes ". Some

[1] Do not attempt to rival the powerful.
[2] Cf. Report on Restraint of Trade, p. 11.
[3] Cf. *Evening Standard*, 10 March 1939.

small inconspicuous mark, a misprint even on the label, an extra comma, often an inscription in invisible ink, which can only be read after being subjected to chemical treatment, is put on the label or carton of goods delivered to agents who are believed to be supplying cutters. Later an investigator walks into a cutter's shop and makes a purchase. He examines his purchase for the " code ". If he can find it, it may tell him what route the goods have travelled to their final destination. Agents of the Proprietary Articles Association, the *Evening Standard* asserts, made more than 10,000 purchases in cutters' shops in 1938; in 2,035 cases the " code " gave away the source of supply. But, as the *Evening Standard* reporter discovered, " the cutters are ' wise ' to the code ". They have their agents too, who carefully scrutinise the goods they handle for any distinguishing mark. Some have a staff of girls removing marked cartons and even repacking the goods; some cut off mutilated labels; one or two of them even employ scientific workers using ultra-violet rays to discover concealed code marks. The system introduced by the guilds to cope with " unprivileged " trades and outsiders was hardly more elaborate.

This system of inspection simply confirms previous experience, that the greater the extent to which competition is superseded by regulation, the greater the attempt to evade regulation and the greater the need for those responsible for the regulations to employ vast resources for detection and prosecution. The quarterly report of an important trade association recently stated that " in the past quarter the price-cutting position throughout the country has shown further improvement ". " Only " 66 new cases of price-cutting had been reported, and of these 52 had been adjusted. Thirty traders had been removed from the stop list; of these 14, who previously acted as price-cutters, had come into line and ceased cutting, and 16 others had closed their business. Over 1,000 " test purchases " had been made, principally from those persistent cutters; in 223 cases the sources of supply had been traced and " suitable action " taken.

> A number of traders, including chemists, had been placed on the stop list for being traced as sources of supply to " cutters " and others for purchasing P.A.T.A. goods in abnormal quantities. In each instance the Association was satisfied that the goods were intended for supply of the price-cutting trade.[1]

We may remind the reader that it is sometimes contended by

[1] Cf. *British Pharmacist*, Aug. 1940, p. 321.

trade associations that most of the cutters' supply comes from illegal sources ; here is the evidence that trade associations must be well aware that the cutters' supply may simply result from purchases of what they consider " abnormal quantities " by regular traders. In all such cases it may be presumed that the margin allowed is apparently high enough to show a profit to the wholesaler supplying agents of the retail cutters as well as to the cutters themselves, selling below the fixed price. The same observation must apply to cases where the " cutting " suppliers get their merchandise by trick, e.g. by calling at the manufacturer's in the name of well-known customers and fetching the merchandise with cars.[1] The supplying of cutters by manufacturers is frequently complained of at retailers' association meetings, when an " organised effort " to stop it is urged.[2] Such action is frequently inaugurated—or continued with more vigour—when associations of particular trades, or of trades with interlocking interests, are nationally united into Federations or Councils.[3]

We hear of actions which do not lead to the immediate " prosecution " of the culprits for this or that reason ; it is sometimes explained by travellers, to the surprise and anger of smaller shops, members of trade associations, that stores have special contracts which allow them to quote cheaper prices ;[4] similarly in regard to a sale of cereals by a company concern—" The thing they had been complaining about was a ' special stunt ' in which the price of goods was cut for a week only."[5] A

[1] Cf. *The Retail Chemist*, Feb. 1940, p. 35.

[2] Cf., for instance, the debate at a meeting of the Liverpool and District Sweet Retailers Association, *Confectionery Journal*, 13 Feb. 1940. Cf. also *The Tobacco World*, Aug. 1940, p. 481 : complaint was made against a cutter's shop which " continued to do a big trade " in spite of all efforts made by the Tobacco Trade Association to stop him.

[3] The new body of the National Federation of Ironmongers which began work in 1938 was constituted as a trade union in accordance with a growing practice among trade associations, and at once got up a stop list of manufacturers, wholesalers or ironmongers in connection with breaches of price-maintenance arrangements. It was estimated that it included 85% of the turnover of ironmongers. It included several sections, a tool trade section, an electrical and a builders' supplies trade section, and the now proclaimed unification of interests apparently facilitated the introduction of the stop-list weapon. Cf. *Manchester Guardian Commercial*, 22 July 1938. So also after the formation of the Confectioners, Tobacconists and Newsagents' Alliance ; cf. *Confectionery Journal*, 21 Feb. 1940, p. 640 ; also *The Perfumeries and Essential Oil Record*, March 1940, p. 78, reports that a new National Council of Action had been formed among hairdressers " to prevent undercutting in proprietary toilet lines, and to obviate unfair trading ". We have referred to the complaints in this trade, see p. 143.

[4] Cf. *The Grocers' Gazette*, 13 April 1940, p. 466.

[5] Cf. ib., 30 March 1940, p. 400.

negotiated peace is sometimes considered even by strong trade associations as being more expedient than action, especially if other associations are concerned.[1]

It is difficult to form anything like an exact opinion of the extent to which action against cutters has been effective. The *Manchester Guardian Commercial* asserted not long ago that in the tobacco trade, in which very comprehensive measures were taken, a four years' campaign reduced price-cutting by 90%, although co-operative societies were still permitted to pay dividends on price-maintained cigarettes and tobacco. Success against price-cutters in this trade cannot be denied. In the grocery trade, however, though the Grocery Proprietary Articles Council dealt with no less than 13,611 cases of price-cutting in a single year, "much further progress is needed before the G.P.A.C. (Grocers Proprietary Articles Council) is in command of the price position".[2] It may be argued by some observers that this should be taken as proof that even in a group as strongly associated as this, the "dangerous monopoly" has not yet been achieved. From the point of view of this investigation, however, the important fact is that competition is essentially reduced, whilst the remnant of it, so far as price-maintained goods are concerned, is subject to organised action aimed at annihilation.

Detection and prosecution are swiftly followed by punishment. The instrument of action is the stop- or black-list: if the fixed price minimum of a single manufacturer is cut, all manufacturers (and also wholesalers where prices are cut by retailers) undertake to withhold supplies of *all* listed goods. The system has been fully described by the Report on Restraint of Trade. The Proprietary Articles Association,[3] for example, publishes from time to time a "Stop List" containing the names of wholesalers and retailers from whom supplies are to be withheld. It is understood, however, that no one is put on the stop list unless he has deliberately broken the conditions upon which he has

[1] Cf. *The National Association Review*, 22 March 1940. Price-cutting existed in the bakery trade between the Manchester Bakers' Association, comprising 700 (Gentile) bakers and confectioners, and the Jewish Master Bakers whose establishments are mainly situated in essentially Jewish districts. The latter had formed an association of their own but this was disbanded for lack of solidarity. The Jewish bakers had always undercut "in connection with brown and black bread", the matter having been "a bone of contention for some years". At last the Gentile association itself undertook the task of organising the Jewish Master Bakers.

[2] Cf. *Manchester Guardian Commercial*, 29 July 1938 and 26 Aug. 1938.

[3] Cf. loc. cit., pp. 12–13.

bought goods from a manufacturer or wholesaler belonging to the association, usually by selling below the minimum price. The trader's name is removed from the stop list as soon as he satisfies the association that he will conform to its conditions, and this frequently happens. The stop list of the Motor Trade Association, for example, contains four sections covering cars and manufacturers' parts of cars, tyres, petrol and accessories. A person's name may be put on the stop list of one or more sections, according to the classes of goods affected by cutting or by overcharging. He may continue to be supplied with goods included in the other sections, however—an arrangement which should not be regarded as a particularly liberal concession, for it was probably necessary in order to avoid certain potential frictions which will be discussed later. The arrangement dates from 1928. On proof to the satisfaction of the Council of the Association that any person, whether a member or not, has sold or offered or advertised for sale any proprietary article of the motor industry at a price above or below the retail price fixed and published by the manufacturer, concessionnaire or other vendor member,[1] the Council may place the name of such person on the stop list and give notice thereof to all members of the Association or may otherwise publish the same. The Council may also place on the stop list the name of any person who supplies proprietary price-maintained articles to, or does any trade in price-maintained articles with, any person whose name is on the stop list. Similarly it may place on the stop list the name of any person whose business is to the satisfaction of the Association shown to be so identified with that of a person on the stop list as to render such a course desirable. Elaborate procedure is adopted before the boycott is actually decided. The Council of the Association appoints a Committee to examine the evidence and to consider such explanations as may be offered. Before action is taken by the Council, the firm is given a further hearing. If the dealer is "guilty" he has the option, if he is a member of the Association, of paying a fine instead of being put on the stop list; but if he is not a member of the Association he is inevitably put on the stop list.[2] Such differential treatment shows that the stop list is not only a weapon for inflicting penalties; it is also a potent pressure upon outsiders to join the Association and so to secure more lenient treatment should they disobey the rules. The Tobacco Trade Association provides

[1] For the structure of the trade, see Chapter V, pp. 41–3.
[2] Cf. Report on Restraint of Trade, pp. 13 and 14.

special facilities for forgiveness for repentant sinners: a trader whose name has appeared on the stop list may have it removed by signing an undertaking that he will not offend again and by agreeing to specific penalties should he do so.[1] It must be emphasised that the general practice of trade associations is first to try to bring the member into line before the drastic action of boycotting is taken.[2]

Enforcement of price-maintenance is most difficult when the position arises that a manufacturer selling a certain article to a wholesaler or retailer directly finds himself obliged to boycott him simply because he has been notified by the association that this customer has been guilty of breaches of agreement in other lines. Such a position may regularly arise where a trade group covers very many heterogeneous articles and where the production of these cannot be definitely allocated to a certain category of producers. Stringent requirements by trade associations for the enforcement of price-maintenance may then lead to a disruption of the trade or prevent price agreements altogether. The very instructive attempt to bring manufacturers and retailers of sports and games equipment together, which has been discussed earlier,[3] is an example of this. The manufacturers' organisation had come to terms with the Sports Goods Distributors' Association; apart from special classes of goods, trading by both parties was to be in strict accordance with the prices in the protected list.[4] Any complaints were to be made by retailers to the retailers' organisation, or to the individual manufacturer, price-cutting retailers were to be removed from the list of retailers, and thus would be deprived of supplies by all manufacturers who had come into the scheme. This removal was to be authorised by a committee representing manufacturers, retailers and the Retail Distributors' Association (which took a sympathetic interest in the scheme on behalf of the department stores). But there was a difficulty;

> a manufacturer whose retail prices were being observed by a retailer did not appreciate why he should withhold supplies because the retailer was cutting prices of lines supplied by another manufacturer.[5]

This viewpoint is understandable. The manufacturer's position

[1] Cf. *Manchester Guardian Commercial*, 29 July 1938.
[2] So also is the practice of the Stationers' Association; cf. *Manchester Guardian Commercial*, 15 July 1938.
[3] Page 93.
[4] We follow here the interesting description in the *Manchester Guardian Commercial*, 16 Sept. 1938.
[5] Cf. also pp. 148–9.

is awkward if he is asked to break with a retailer with whom he has never had any complaint.

The same difficulty may be observed in the Proprietary Articles Association. A manufacturer may find himself obliged to boycott a " cutting " retailer from certain goods on the protected list. But he may also be obliged to stop supplying such a customer on the stop list with commodities which are not on the protected list at all; the "cutter" may then get such articles from manufacturers outside the association or otherwise. The " Fair Trading Policy " in the electrical equipment trade was in fact nothing but a *faute de mieux* practice, taking into account the impossibility of drawing up a comprehensive protected list for such a great variety of articles. If manufacturers feel themselves unduly tied by a protected list and the drastic boycotting measures used to enforce it, they will assess the value of a trade association agreement very differently from those who believe themselves to benefit by such agreements in all their dealings. For this reason, apparently, as a precautionary measure, the Motor Trade Association divided its stop list into the four sections described above, with the particular provision that a person's name may be put on the stop list of one or more sections, according to the classes of goods affected by cutting, but may nevertheless continue to be supplied with goods included in other sections.[1]

In the book trade the publishers adhering to the so-called Net Book Agreement [2] have chosen a very simple way of fining distributors who sell their books below the official retail price. The relevant paragraph in the agreement runs :

> In the event of your infringement of any one of these conditions we shall hereafter each require you to pay for all Net Books invoiced and supplied to you at the full net prices at which they are published.[3]

Though the imposition of the agreement on booksellers was by no means easily achieved,[4] the position of publishers once prepared to combine was strong. The leading publishers were well aware that no bookseller of standing could do without their books ; the enforcement of any sort of price agreement was consequently greatly eased, especially in comparison with conditions in other trades. No protected list was necessary, for the goods in question did not vary in kind. There was no competition with unpriced

[1] Cf. Report on Restraint of Trade, p. 13. [2] See above, pp. 13–15.
[3] Cf. Stanley Unwin, loc. cit., pp. 348–9.
[4] Cf. Unwin, loc. cit., pp. 215 sqq.

goods—indeed, the book was one of the first price-labelled articles, and incidentally therefore the first to stimulate the formation of a trade association. As Mr. Stanley Unwin tells us, it was only necessary to ask anyone applying for trade terms, " Have you signed the Net Book Agreement ? ", though some particular problems had to be solved such as the position of libraries, the competition of which has always been viewed with apprehension by the bookselling trade; they were not allowed any discount.[1] It was likewise relatively easy to arrange for boycotting the retail undercutter. The term " stop list " was not even to be used; bookseller offenders were supplied as usual—with the one exception, that the price quoted to them would leave them no margin for profit. It may be wondered, incidentally, why this system of fining the price-cutting retailer by denying him profit on the cut articles, but continuing to supply other uncut goods under normal trade conditions, might not to some extent replace the stop list with its somewhat nauseating taste of boycotting, in particular where a great range of goods come under the scope of one and the same trade association. It would certainly be a more humane way of dealing with cutters, though it may be argued that in the book trade, with its uniform character of goods,[2] it means not much more than the administration of an anaesthetic before the execution. A bookseller would have little chance of survival if he were found guilty of having infringed the Net Book Agreement.

We have limited our analysis to price-cutting in the strictly modern sense—the sale of branded articles below the fixed price. The fight against the cutters is fought without much publicity, but these cases are of importance to the trade association mainly in their aggregate and cumulative significance, though this, as we have seen, implies a rather large machinery for detection and prosecution. Price-cutting does not in general, however, lead to what is called " price war " in industrial competition, with its feature of remorseless " cut-throat " competition. Trade associations are well advised not to give too much publicity to the " immoral " action of price-cutters, for consumers might take an awkward line if the propriety of certain price levels were

[1] It is, however, a well-known fact that many books may, and actually do, reach some libraries in the form of copies sent out for review.

[2] A very apt description of the general " Heterogeneity of Products " is given by Frederick Brown, Lecturer in Business Administration and Statistics, London School of Economics, in Plant, loc. cit., pp. 224 sqq. But the author might have considerably increased the value of his observations if he had analysed the influence of this heterogeneity upon cartellisation and the relationship of trade associations in regard to a uniform policy of price maintenance.

subjected to a more detailed discussion. The letter by Mr. H. D. Case, quoted before, is characteristic of such a course of development. It should not be overlooked, however, that price wars, which may not be strictly identical with price-cutting in the above sense, may happen in the sphere of trade-association price politics, and so impressive, apparently, has the term "price-cutting" become as a slogan, that new competitors of a trade association, simply because they approach the market with a lower price level, are "accused" of that "evil" of cutting. In this way the former term of competition may, ultimately, be entirely superseded by that of price-cutting, although the meaning of the latter has been derived from an entirely different competitive position.

An example of such a price war, in which an association stood and fought against a powerful cutter with the aid of every weapon in its armoury, was the Kensitas conflict early in 1940. Here was a firm outside the trade association (J. Wix and Sons, Birmingham), which had become a source of annoyance to the majority of the trade by putting on the market a certain type of cheaper cigarette which was imposingly advertised. Many trade associations joined in the fight against this competition, as has previously been stated.[1] In this battle, indeed, a most impressive array of champions of "fair trading" enlisted; the following associations all took part:—[2]

(1) The National Union of Retail Tobacconists
(2) The National Union of Confectioners
(3) The Federation of Newsagents
(4) The Federation of Off-Licence Holders
(5) The Hotels and Restaurants Association
(6) The Retail Distributors' Association.

A trade journal reported that

> a leading member of the Committee and of the trade expressed the opinion that it was up to the wholesale and retail trade to put up a bold fight, because it would undoubtedly affect future conditions of trade in a way adverse to the interests of distributors if Messrs. Wix were able to gain the day.

A movement of boycott, so it was asserted, had already begun; "the local (Birmingham) Co-operative Society did not stock Kensitas and the organised wholesale trade in the Midlands

[1] See above, pp. 53 and 148. [2] Cf. *Tobacco*, 1 Jan. 1940, p. 71.

was solid ". The position of the N.U.R.T. was made clear at a meeting of the Northern Tobacco Trade Association :[1]

> Last July Messrs. Wix suggested new terms of trading. There again every effort was made by the N.U.R.T. before these terms were put before members of the trade by Messrs. Wix circular, to get them withdrawn and to discuss the position with the N.U.R.T., but the firm were adamant. That put the N.U.R.T. in the position to decide, for the first time, what they should do in the matter. The decision was to recommend to members not to stock that line[2] while those terms prevailed, and there were other considerations.

After some concessions by Messrs. Wix, the fight continued; the following resolution was presented by the Annual Conference of the N.U.R.T. in Spring, 1940 :[3]

> In view of Messrs. Wix's uncompromising attitude, resolved that the N.U.R.T. :
>
> (*a*) again strongly recommends its members to continue to refrain from stocking K4's.
>
> (*b*) all possible efforts be made to close existing outlets, including co-operatives,
>
> (*c*) educate the public to the maximum possible extent.
>
> (*d*) urge all tobacco traders to deal only with wholesalers who support their interests, and
>
> (*e*) request branches to arrange to have an appropriate question asked in the House of Commons.

This resolution was unanimously adopted. The efforts " in getting the co-operatives to give up selling Wix products " were praised at the meeting. Suggestions in the direction given by the resolution were that the railways should be approached in the matter " of the sale and ' prominent display ' of Kensitas cigarettes at railway stations refreshment rooms ". The N.U.R.T. was asked " to make representations to the companies . . . which have now virtually been taken over by the Government ".[4] The fight appeared on the surface as one of retailers against the introduction of a cheaper cigarette, but it should not be forgotten that in tobacco and cigarettes the interests of manufacturers and distributors are closely tied together, for the N.U.R.T. is represented on the Council of the Tobacco Trade Association with its powerful agreements with manufacturers and its strong policy of price-maintenance. The example of the Kensitas fight

[1] Cf. *Tobacco*, 1 Feb. 1940, p. 93.
[2] The cigarettes mainly produced by Messrs. Wix were K4's, K20's and K10's.
[3] Cf. *Tobacco*, 1 April 1940, p. 52. [4] Cf. ib. 1 April 1940, p. 71.

demonstrates that the aim of enforcing price-maintenance by boycotting methods should not be regarded as being limited to the observance of conditions of protected lists by association members; the same fighting method which is embodied in the stop list may be applied to giant outsiders of any kind as soon as retail trade associations, and in particular those closely linked up with manufacturers' associations, feel strong enough to proceed in this direction for the purpose of enforcing the maintenance of their general price standards.

PART V

THE LIMITATION OF NEW COMPETITION

CHAPTER 15

DISTANCE LIMITS

. . . shopkeepers and tradesmen . . . can never be multiplied so as to hurt the public, though they may so as to hurt each other.
ADAM SMITH, *Wealth of Nations*, Book II, Ch. V.

THE problem of new competitors always besets combinations, either of manufacturers or of traders, however strong they may be. It may arise in many different ways. In all but the rare cases of a complete or almost complete monopoly, there is always a danger that new outsiders may join those already in existence. The fear of this certainly influences the combination when it frames its price policy. Again, there is a " danger " that the number of competitors within the combination itself will grow. If prices are so regulated as to leave wide profit margins, the cartel must fear the growth of a large number of new producers all seeking to exploit these very favourable conditions. Permission to enter the cartel cannot easily be withheld. In industrial combination the weapon against the development of such conditions as would lead to the renewal of competition is the quota or allocation system, which limits the output of each member of the combine according to the collective view of market prospects. But such a procedure is not wholly satisfactory. The total tonnage to be allocated may become smaller; each member's share must diminish. This may happen by overproduction " within " the cartel caused by the entry of new producers, but it may also happen through a slackening of the demand. Whatever the cause, the works with highest costs will be hit hardest; their marginal rent will disappear; a scramble for better quotas will begin. At this stage, the big producers in the industry may buy others' shares of tonnage, and a trust movement will proceed within the combine. The effective control of single units thus becomes an indirect means of maintaining the price level.

Conditions of this kind are alien to retail trade associations, for they are not formed to regulate the shopkeepers' turnover; there is no allocation of resale quantities to single retail outlets. In this respect, retail trade associations are much more like the predecessors of cartels—the syndicates, whose function was to regulate prices but not production.[1] No case exists, as far as we are aware, of a genuine system of allocation of supplies to retailers. The problem, however, which led to the quota system in cartels [2] has come to the front repeatedly in the short history of modern retail trade associations, as we have already seen in our analysis of the conditions which may effect margin-fixing for branded goods.[3]

In industry generally, over-production may cause the largest units to squeeze out the weakest and retain their quota by amalgamation. But here again conditions in the retail trade are wholly different. A multiplicity of retailers remains a necessity, for that is the basic structure of the retail trade. This fundamental condition has of late been counteracted by the development of bigger units [4]—department and chain stores—but it still holds good for the vast majority of retail trades and finds expression in the predominance of the absolute numbers of small traders, though the relative importance of their turnover may diminish in this or that group. Some dominant concerns may gain a leading influence, if not in the retail associations as such, at least through organisations of producers, which (e.g. in the chocolate or motor car trades) may be closely linked with the retailers' associations. But there is no evidence that definite action has been taken by these leading concerns to proceed on the cartel principle of closing redundant retail outlets, or even to draft a policy directed towards that objective.

The Committee on Restraint of Trade supplied no information

[1] An exception may be found—though even here conditions are not quite comparable with those of cartels—in the motor trade. The Motor Show is expected to provide a basis for calculation of future sales of exhibitors through distributors and dealers; this may be regarded as a "sales quota" (cf. *Manchester Guardian Commercial*, 28 Oct. 1938). It sometimes happens too that certain local retail outlets obtain from manufacturers exclusive selling agencies for their district, and this may be akin to quota distribution from the manufacturer's viewpoint (cf. Bolling, loc. cit., pp. 229–30).

[2] Even in so early an organisation as the Newcastle Vend (see Levy, *Monopoly, Cartels and Trusts*, pp. 117–23): "The basis," so declared the Chairman of the Newcastle Coal Committee in 1836 in an official inquiry, "is merely an imaginary quantity; the basis is taken merely to apportion the relative quantities as between the collieries; the coal owners meet once a fortnight or 22 times a year, and according to the price in the London market, the quantity issued, which is to be divided amongst the collieries, is determined."

[3] See above, p. 107. [4] See Chapter 4.

about the conflicts which may go on behind the scenes between producers' associations (if they are strong enough) and retailers' associations, or between the strong and weaker members of the respective organisations in relation to the possible effects of margin policy on stimulating undesirable competition. It is known that in the motor car trade

> from time to time the magnitude of this margin has been the subject of conversations between manufacturers from the angle of whether a reduced margin would enable selling prices to be so reduced as to provide an additional volume so considerable as to leave the net return in cash to distributors and dealers unaffected.[1]

From this remark, the difficulty is clear. Care must be constantly exercised by producers' organisations to avoid hurting the interests of the affiliated retailers. This may be a delicate task, especially as the retail association is frequently regarded by its members as a means of obtaining a "reasonable" profit for the less efficient members. Retailers are sometimes well aware of the danger of the trade falling "largely into the hands of combines",[2] and where a trade association is mainly composed of smaller retail units such apprehensions may become particularly pressing. For all these reasons, it appears evident that retail trade associations have not been in the position, either on their own initiative or on that of producers' organisations, to initiate a policy of controlling competition by the regulatory application of higher or lower profit margins to members. Nor are they, as we have seen, in a position to fix quotas of retail turnover. Nor is there yet a real possibility of buying out weak competitors and adding their share of turnover to the more efficient members of a trade association. Nevertheless, the desire to control competition exists, and it will remain as long as trade associations consider themselves as protectors of the rank-and-file of the "legitimate" trader as he traditionally exists.

One method of applying some degree of restriction to the number of competitors by cutting down the number of new entrants is the so-called "distance limit". This device consists of a control by the trade associations of new entries into the trade by refusing admission to the association on the ground that, in the particular locality where the new trader wants to establish

[1] Cf. *Manchester Guardian Commercial*, 28 Oct. 1938, p. 396.

[2] Cf. Mr. Higgs, Chairman of the Midland and Birmingham Tobacconists' Association, in regard to the difficult position smaller manufacturers would have to encounter by depending on shortened supplies of leaf tobacco (see *Tobacco*, 1 Feb. 1940, p. 86).

himself, there are already enough traders to satisfy the present demand and to secure a "profitable" living. Only very strong trade associations can actually enforce such restrictions. But if the trade association is linked up with manufacturers who hold a key position in supply, or if a retailer depends upon the supply of certain services which can be denied to the newcomer, the conditions for such restrictions may well be present.[1] Adam Smith stated categorically that manufacturers, no less than the public, should welcome the existence of a great number of retail competitors,[2] for this would increase the price for their manufactures, but now conditions appear to be very different; the manufacturer, for reasons already explained, considers that his interest lies in the protection of the rank-and-file retailers, represented by their trade associations, in order to secure the maintenance of the price level he desires and for the maintenance of which his own industrial combination is designed. The Report on Restraint of Trade noted that certain distance-limit practices were "defended" on the ground that for the existing outlets a "reasonable livelihood" had to be secured. The Report (as usual) did not inquire into the meaning of the terms "reasonable" or "livelihood". But we may infer from former statements that again the "ordinary" retailer was meant, and if this is the case then the distance-limit method appears to be nothing but another device to safeguard the less efficient against the more efficient.

The demand for a limitation of shops is frequently voiced by retail trade associations. The chairman of a sweet retailers' association recently said

> that in the past traders had been more or less encouraged to take out licences for goods which they had not sold before. The Sweet Retailers' Associations were anxious that new premises should not be allowed to open unless they were necessary or might be required in case of emergency.[3]

Some important "success" has already been achieved, though at first only locally; the Liverpool and District Sweet Retailers' Association acting in concert with the District Wholesale Confectioners' Association have made an experiment with the 150 yards

[1] Cf. Wilson and Levy, *Burial Reform*, etc., p. 207, where an example of an alleged restriction of such kind is mentioned in the funeral trade. The importance for small undertakers of being able to rely for the supply of hearses and carriages on the more important vertically-combined establishments is mentioned on p. 156.

[2] Cf. Adam Smith, *Wealth of Nations*, Book II, Chapter V.

[3] Cf. *Confectionery Journal*, 3 April 1940.

limit, which implies that no new shop shall open within that distance of existing businesses.[1] It seems, however, that the manufacturers have not yet decided to support such a policy, although the concentration in this industry is such that they could easily do so. There is no doubt that in the sweets retail trade the idea of enforcing a distance-limit is one of the favourite themes of competition control.

The licensing or registration of shops is often advocated as a preliminary to subsequent attempts to enforce a " distance limit ".[2] At a meeting of the newly formed Confectioners, Tobacconists and Newsagents Alliance, London Branch, a speaker suggested that " licensing could be made the basis for registration and limitation of shops ".[3] The Grocers' Federation advocates the registration of food shops and the licensing of food retailers. " This," wrote the *Manchester Guardian Commercial* in 1938,[4]

> would presumably keep existing dealers in business, but would make it difficult for new entrants to come in. Control under any circumstances has inherent dangers. Control without facts may easily be disastrous. Somewhat surprising, therefore, it is to find that the Grocers' Federation opposes the scheme for a census of distribution. " The enumerators under a census of distribution," said Mr. F. W. Newman, President of the Grocers' Federation, " would be the advance guard of regimentation of consumers, whose interests are best served by competition, rather than by trusts and monopolies."

It may be doubted whether in fact the enumerators of a census of distribution would be the advance guard of consumers' regimentation. It might be contended with more justification that the advance guard was already the retail trade association, with its endeavour to establish a non-competitive price policy backed by protected lists and boycotting clauses. This fear that from the findings of a census of distribution some sort of control might indirectly emerge, which would be different from the self-imposed limitation of competition by associations, in that it was exercised in the name of some public authority, seems to be present in the mind of many important association leaders. Publicity has never been welcomed by industrial or trade com-

[1] Cf. *Manchester Guardian Commercial*, 5 Aug. 1938.

[2] Cf. *Confectionery Journal*, 3 April 1940, p. 123, and ib. of 6 March 1940. Councillor Thompson before the Liverpool and District Sweet Retailers' Association, pp. 8–9 : " Their association had been in being for many years and had discussed many forms of control, distance limit, price control, the control of club trading and the licensing of shops." Cf. also, for the same tendency in the grocery trade, *Grocers' Gazette*, 1 March 1941, " Limitation of Shops ".

[3] Cf. ib., 21 March 1940, p. 640.

[4] Cf. 28 Aug. 1938.

binations, for obvious reasons. In a further article of 26 May 1939, the *Manchester Guardian Commercial* again deals with the problem. It is suggested that the Census of Distribution is met with small enthusiasm by small shopkeepers because of fear that it would show, like the United States Census, that a high percentage of the total turnover was handled by a small percentage of outlets, and that such a statistical revelation might check the public sympathy for small retailers. It may also be feared by small retailers that if a limitation of shops by some public measure were envisaged as a result of such a Census, the department and chain stores would enjoy a better position for quota allocation. It should not be forgotten, however, that many small shopkeepers might also fear that any legislation purporting to limit their numbers, although praiseworthy as a general principle, might hurt individual shops which, though considered to be redundant, try to carry on.[1]

It is certain that trade associations have good reason to urge limitation of the number of shops. Certainly there is real waste when, as was stated officially,[2] twenty distributors of milk operate in one street. This waste has been repeatedly criticised *inter alia* by the Fabian Society. But this does not mean that control by trade associations through registration and distance-limit should be unconditionally approved as the best means of achieving such limitation. It is quite easy to devise a comprehensive and rational scheme for organising the entire milk trade on the planning principle, just as if it were a question of erecting a new suburb under a town-planning scheme. Students who do so, however, like Neal in his very able book, tend to overlook that it is not at all easy to plan a retail trade without considering fully all existing conditions—the number of shops, how to decide

[1] In summer 1940 a trade journal reported a scheme for the control of distribution of cigarettes and tobacco at a meeting of the London Branch of the N.U.R.T.A. The scheme would be started in an area " strong enough, from the organisational point of view, to carry it through ". A census of all retailers would be taken, and they would be invited to support the scheme. All further attempt to establish tobacconists in that area would have to be submitted to a properly constituted committee of wholesalers and retailers. Should the Committee decide that a retail business was not necessary, wholesalers would be instructed that a new account would not be opened. The journal observed that the scheme found " considerable enthusiasm ". Apparently, however, no immediate steps were taken. A further discussion was suggested after replies had been received by wholesalers. But the attempt to adopt such a scheme throws a significant light on the tendencies which are a constant undercurrent of trade associations' aims (*The Tobacco World*, Aug. 1940). For similar tendencies towards restriction in the hairdressers' trade cf. *Hairdresser and Beauty Trade*, 3 Jan. 1941, p. 2.

[2] Cf. *Manchester Guardian Commercial*, 9 Sept. 1938.

which shops are redundant, measures for indemnifying present owners by cash or transfer to another occupation, and so on. Conditions in the milk trade may be easier than in other trades, for, as Neal points out, milk is a standard commodity, of daily need and increasingly recognised as being of particular national importance. Neal himself agrees that his idea of planning the milk trade by " a run of distributive wholesale centres " with " retail depots " radiating from these centres, each with a given run of streets to serve (distance limit !) presents an " imaginary picture very different from one that might be reasonably drafted on a clean sheet " ; but he nevertheless supposes that an " enlightened milk industry " might be created.[1] He tends to overlook the fact that in the milk trade conditions may be somewhat better suited to the distance-limit ideal than elsewhere. But nevertheless difficulties arise ; in particular, how is weeding-out of shops carried out where a retail trader sells a wide range of goods, the distributive conditions for which vary very widely ? There may be a redundancy of small tobacco shops in one place, but some dealers may contend that the mainstay of their trading is in newspapers or sweets ; some bicycle dealers may argue that they earn most by repairs, and that although there were plenty of bicycle shops in the vicinity, repairers might be few.[2] The position of chain stores, counting with their large turnover as " one " retail outlet, would have to be settled by planning " distance-limit ", at least as far as redundancy schemes came into operation. But what would happen if prospective shop-keepers were told that they could not be allowed to start because the increasing turnover in their goods would be sufficiently dealt with by the existing large department stores or chain stores which could easily expand their selling apparatus, without even incurring much greater overhead charges ?

In many cases the " distance-limit " remains an aim and policy of trade associations which may be considered as being far distant from realisation ; it may be even disputed whether the term

[1] Cf. Neal, loc. cit., pp. 155–7.

[2] What may happen in such cases of distance-planning can be gathered from a case which was brought before the Lancashire Chancery Court at Liverpool. Defendants had given a covenant not to carry on at their place of business any trade other than that of a grocer or provision dealer. Apparently this covenant was made in order to limit their competition with other existing traders near by. But the defendants later on sold articles like milk of magnesia, aspirin, tooth pastes, shaving creams, etc., and the dispute arose about the question whether such articles were indeed " groceries ". Cf. Alt Park *v.* Liverpool Co-operative Society Ltd. ; see also *The Retail Chemist*, Feb. 1940,

" trade practice " should be applied to it, as in the Report on Restraint of Trade; the aim of establishing " distance-limits " between competitors is a part of trade association policy, but is not a " practice " as are for instance the issue of price lists and the imposition of boycotting rules. It is certainly a means of limiting competition. As a means of achieving this, the device is in its infancy, although at least one very remarkable prototype has appeared—the " distance-limit " regulation in the newspaper trade. Here for the first time a very elaborate and efficient machinery has been set up to support the device.

The business of newspaper selling in shops has certainly unique features. Newspapers are supplied " on sale or return "; the proprietors of newspapers are therefore interested in guarding against the undue wastage which may occur if the number of retail outlets is greatly increased. The risk of too many " returns " increases proportionately with the number of outlets. Newspaper publishers therefore give support to the distance-limit principle. Distance from the nearest established newsagent is generally the chief factor taken into consideration in adjudging an application, but the Committee on Restraint of Trade was informed that all the circumstances, including the efficiency of the established newsagent, are taken into account.[1] The Report adds:

> In case of dispute the wholesaler is generally in a position to enforce his view as against that of the retailers' association by supplying an applicant, while the publishers are in a position to enforce their view as against that of either the wholesalers or retailers.

Trade association organisation in the newspaper trade is very powerful, and this explains the relative ease with which the distance-limit could be applied. In addition to local associations of publishers there is the Newspapers Proprietors' Association,[2] which represents the national newspapers; the Newspaper Society, representing provincial newspapers; the Periodical Trade Press and Weekly Newspapers Proprietors' Association, representing the periodical publishers. Wholesalers are organised likewise. The National Federation,[3] in 1919, had a membership of only 5,000. In 1938 it had 25,000 members; it claimed to represent approximately 75–80% of the turnover. This explains the foundation upon which the distance-limit policy could be built. The rules are not uniform. In Lancashire the distance

[1] Report on Restraint of Trade, pp. 20–1.
[2] We follow here the *Manchester Guardian Commercial* of July 1938.
[3] of Retail Newsagents, Booksellers and Stationers.

limit is 200 yards; in other parts of the country it is fixed by other considerations. The effect of the scheme is that during the year ended 31 March 1938 the Circulation Managers' Committee of the Newspaper Proprietors' Association dealt with 1,220 applications for supplies for new retail outlets; in 270 of these cases supplies were granted, and in 950 refused. One can only partly agree with the *Manchester Guardian Commercial*, therefore, when it contends that the "National Federation is in no sense a licensing body". It is said that this organisation is "merely" the machinery "by which the retail trade makes representations to proprietors in cases where it thinks that supplies should not be given", but surely from the economic point of view—though not perhaps strictly formally—its effects are hardly distinguishable from those of a licensing body. Indeed, the *Manchester Guardian Commercial* itself states that "on Sunday newspapers, the newsagents' grip is less powerful". The same journal observes that "the distance-limit policy has not been a mere obstruction of new entrants" on the grounds that new entrants have increased by 5,000, from 40,000 to 45,000. This reasoning, however, resembles that of "complete monopoly": the question should not be whether distance-limit stops new entrants altogether; it should be, how far does it succeed in checking the flow of them. It may be argued that in the sweet confectioners' trade outlets have risen from some 100,000 to 250,000 in the same period, but such statistical comparisons are gravely misleading, for they leave out of account the general trend in the need for new retail outlets which varies both according to changes in the national wealth and according to the varying economic circumstances of different trades. If the demand for sweets increased more than that for newspapers between 1914 and 1938, that would amply account for the greater increase in retail outlets, quite apart from any interference by distance limit. There may be trades where because of adverse circumstances outlets may have diminished or not increased simply because of changes in demand. Moreover, a relatively small increase in the number of shops in any trade may be due less to the decrease in the number of newcomers than to a relatively large disappearance of existing outlets. The question which remains, and which cannot be tackled by such statistical references or comparisons, is simply how far the distance-limit policy has counteracted the increase of retail outlets which would have resulted if the road to new entrants had not been checked by a barrier, and the figures relating to the newspaper trade given above speak very clearly.

The number of applicants turned down must have been very great indeed. The *Manchester Guardian Commercial* makes a special point of the fact that proprietors do not accept the distance-limit policy as such; they are concerned with individual shops on their merits. But in practice, as the journal explains, this means only a difference in standpoint rather than in result. Only in a small residuum of cases is there any real difference between the Federation and the proprietors.

The P.E.P. Report on the British Press did not see much harm in the system of distance-limit as existing in the newspaper retail trade. It agreed that "the system is obviously open to abuse", but added that "in practice the consumer appears to be thoroughly well served and the limitation of outlets undoubtedly helps to keep retailing costs down to their present low level of one-third on a perishable article costing well over a penny to produce". The question, how far the limitation must simultaneously discourage such new retail businesses as would have to rely on a combination of articles with newspapers, such as sweets or cigarettes, was not taken into account, but it was stressed that the limitation of shops was preventing waste, and was providing a basis for the enforcement of minimum conditions for the workers concerned.[1] Such arguments tend, however, to obscure the issue. The distance-limit was invented neither for the sake of consumers nor for that of workers, but simply for the sake of the existing number of retail outlets which it aims at protecting against new competition. One gets the impression sometimes, indeed, that the "planning" ideal excludes the consideration that possibly more efficient newcomers may be selected better by allowing free competition with the "old-established" units than by making the yardstick the measure of their access to trade.

[1] Cf. P.E.P. Report, p. 270.

CHAPTER 16

CONTROL OF QUALIFICATION

> Trade must not be entered into as a thing of light concern; it is called *business* very properly; for it is a business *for* life, and ought to be followed as one of the great businesses *of* life.
>
> DANIEL DEFOE, *The Complete English Tradesman*, 1726.

QUALIFICATION as a fundamental condition of admission to a trade was one of the leading principles of the mediaeval guild system. It has been so fully and so frequently described by economic historians that it is unnecessary to describe it again as an interesting parallel to the present aspirations of trade associations. This very system led by its stringency to destruction of the guild system from within, for it became the main target for attack by modern manufacturing industry in its fight against the guilds. It is appropriate to quote Adam Smith on this matter, writing just before the entire abolition of the trade guilds. After strongly criticising the whole system of long apprenticeships, he describes how " the most insignificant trades carried on in towns " have managed to become incorporated, " and even where they have never been incorporated, yet the corporation-spirit, the jealousy of strangers, the aversion to take apprentices . . . generally prevail in them, and often teach them by voluntary associations and agreements to prevent free competition which they cannot prohibit by bye-laws ". He contrasts the position in agriculture: " No apprenticeship has ever been thought necessary to qualify for husbandry, the great trade of the country." He further observes that a " public register " is apt to favour such methods of limited admission, for it " gives every man of the trade a direction where to find every other man of it ". His criticism of the system is sharp:

> The pretence that corporations are necessary for the better government of trade, is without any foundation. The real and effectual discipline which is exercised over the workman, is not that of his corporation, but that of his customers . . . An exclusive corporation necessarily weakens the force of this discipline . . . It is upon this account that, in many large incorporated towns no tolerable workmen are to be found, even in some of the most necessary

> trades. If you would have your work tolerably executed, it must be done in the suburbs, where the workmen, having no exclusive privilege, have nothing but their character to depend upon, and you must then smuggle it into town as well as you can.[1]

This was the position in the days of dying corporation rule. It presents an atmosphere not unlike that of to-day; it is ideologically related with the increasing demand by trade associations to see their trade registered and to draft within the precincts of such registration, which allows a statistical control over all members of the particular trade, a code of qualification with the object of regulating the admission of newcomers.

Many different arguments are brought forward in support of this system. It is contended that it is in the interest of the national economy to prevent the overcrowding of trades; that it is in the interest of the new traders themselves, who should be protected against quick ruin; that it is in the interest of the public which should be protected against bad workmanship. But it is seldom or never contended that the limitation of new entrants by qualification rules tends to protect the existing outlets of trade whatever their efficiency may be. There is not much possibility of a quota system of regulating supplies in the retail trade, as we have seen. The limitation of supplies by qualification tests, however, may be generally applied as some sort of substitute for allocations. Particular retailers may be favoured by manufacturers in accordance with association rules, with reference to their permitted location (not exactly identical with "distance-limit") or to their efficiency and suitability as "attested" by a trade association.

In the cycle and motor trade, for instance, according to the Committee on Restraint of Trade, a newcomer is not supplied without some inquiry being made by the British Cycle and Motor Cycle Manufacturers and Traders Union whether he is "suitable" from the point of view of premises and capital, and of practical capacity to undertake repairs. Conditions for "admission" have increased since then in scope. A scheme called "The Draft Convention of Trading" and prepared by the National Association of Cycle and Motor Cycle Traders for consideration by the manufacturers' organisation, the British Cycle and Motor Cycle Manufacturers, in 1938 defines the status of a "bona fide cycle trader". He is a trader who

(*a*) Has suitable premises for the display and sale of stock.

[1] Cf. Adam Smith, *Wealth of Nations*, ed. 1822, Book I, pp. 128–35.

(*b*) Holds a representative stock of current cycles, accessories and specialities.

(*c*) Is open at all reasonable hours for public service, devotes his time mainly to his business or provides adequate staff.

(*d*) If entirely a newcomer to the bicycle retail trade, has a stock of not less than £100 retail value?

(*e*) Displays at least three current model bicycles all the year round (except in towns under 5,000 population).[1]

Similar qualifications are required from the would-be motor-car trader, wholesale or retail. Retail dealers are obliged continuously to stock new cars; they have no authority to undertake trade sales; they must occupy premises with suitable accommodation for displaying new cars; they must have proper service facilities or other alternatively suitable service arrangements.[2]

Sometimes, as in the White List project of the radio trade described before,[3] the conditions are less definite, and the qualification mark is simply "the reputable manufacturer" who will only supply to registered traders. Of course the term "reputable" may be left open to a restrictive interpretation.[4] We have mentioned before the "Fair Trading Policy" as characteristic of the selling arrangements among electrical equipment dealers. Under this agreement a retailer must have a shop or showroom and carry a "reasonable" stock of electrical products.[5] A retail trader may also appear as "unqualified" when, as in the confectionery and grocery trades, business is conducted in so-called "drawing-room" or "parlour" shops by people who are not "properly" in business at all. Much drapery is also sold from houses in circumstances which raise the question of whether a house is used as a shop. Such encroachments upon the domain of the retail trader may also be subject to qualification rules.[6]

In the book trade, applications from those who wish to be recognised as entitled to the trade terms are examined by a standing committee of booksellers and publishers, and the applicant is normally required to show that he is in a position to create some demand for books by having a shop and carrying stocks, or by issuing lists in order to create a mail order business.[7] Stationers' organisations adopt a similar attitude. The Stationers'

[1] Cf. Report on Restraint of Trade, p. 19, and *Manchester Guardian Commercial*, 23 Sept. 1938.
[2] Cf. *Manchester Guardian Commercial*, 28 Oct. 1938.
[3] P. 48.
[4] Cf. *Electrical Trading*, Feb. 1940, p. 48.
[5] Cf. *Manchester Guardian Commercial*, 17 June 1938.
[6] Cf. ib., 5 Aug. 1938.
[7] Report on Restraint of Trade, p. 10.

Association aims at preventing " the supply of stationery goods for resale by persons or firms outside the trade unless a proper stationery department is in regular being ".[1] The Association has taken particular care that a business not exclusively concerned with stationery articles should have a separate and permanent section only for stationery, in the charge of a suitably experienced assistant, who should be only or mainly concerned with that section.[2]

This type of qualification deals primarily with the financial condition of the newcomer. Of equal weight as a qualification is the applicant's technical efficiency. This is very difficult to assess; the retailer is not in general a producer, and his technical efficiency cannot be judged by the articles he sells. Indeed, the growing sale of branded articles relieves him from the necessity of knowing much about the technique of handling such merchandise.[3] In some cases, however, the retailer may, by providing particular services, or by the special character of his trade, be a producer as well, and then his qualifications may be tested by the efficiency of the product or service he provides. An interesting example is offered in this respect by a trade which does not exactly enter the scope of this investigation, but which has developed in some respects on parallel lines—the building trade. Builders are certainly " producers " and " retailers " combined. Their competition concerns not only their own trade but also that of the building societies. The menace of jerry-building by venturesome competitors has long been one of the main grievances of the more important building societies. In order to protect their members from abuse when dealing with inefficient or incompetent or unreliable builders, the National Association of Building Trades Employers, with the co-operation of the Royal Institute of Architects, the Chartered Surveyors' Institution and the British Standards Institution, in 1937 launched a scheme which involved the formation of a National House-Builders' Registration Council. Members of this body bind themselves to certain qualifications as regards the houses they build; they permit inspection of their houses during erection, their certification on completion and the rectification of any defects which may appear within two years owing

[1] Cf. Report on Restraint, p. 10

[2] Cf. *Manchester Guardian Commercial*, 15 July 1938.

[3] Cf. Bolling, loc. cit., p. 229: " This means that in these [the proprietary articles] trades a shopkeeper needs no technical knowledge of his merchandise, that anyone with sufficient capital can open a shop, and that shops in competition will be carrying practically the same brands of merchandise in their stocks."

to non-compliance with specification ; the use of good material and good workmanship is implicitly covenanted for in the original guarantee of membership. The Building Societies Association responded at once to invitations to support the scheme, Sir Harold Bellman, the chairman of the Association, becoming one of the vice-presidents of the new body.[1] The Building Societies Association, indeed, had itself evolved a " Code of Ethics and Procedures " which had to be accepted by all prospective members of the Association.

> Agreement as to the limits of safe practice had become urgently necessary. There was a decided risk that, with the continuance of uncontrolled competition, those limits might be exceeded with disastrous effect on the whole movement . . . The appearance of mushroom growths, resembling Building Societies of the British type only in name, was a sufficiently arresting danger signal,

wrote the official organ of the Association.[2] We are not in a position to express an opinion how far, in this case, the regulation, which is openly asserted to be a limitation upon new competition, serves the needs of the public alone. Certainly the public should be protected against jerry-building and other evils, but it is questionable whether that protection should be exercised by private organisations only, especially when such control may incidentally carry with it an increased power to control competition in general. This problem could be investigated very usefully by a Royal Commission on building and building societies.

In the undertaking trade, which also combines retail service with production, one of the fundamental principles of a scheme for registration [3] has been to demand a qualification test of the undertaker's personal technical efficiency. This is certainly the most expedient way to limit the admission to a trade. In spite of this, the service as such and the supply of coffins would be subjected to standardisation, made in conjunction with the price lists.

The most interesting attempts in this direction are to be found in the trade of the chemist, druggist and pharmacist. The pharmaceutical service in the widest sense is steadily extending its boundaries ; it is the most spectacular case of the encroachment of one group of retail trades upon another.[4] In the days

[1] Just previously, in 1936, there had been a fundamental change in the organisation of the building society movement, the new Building Societies Association having superseded the 67-year-old looser association.

[2] Cf. *Building Societies Yearbook*, 1937. [3] See details below, pp. 180–90.

[4] Competition between the dispensing doctor, the druggist and the grocer has been a matter of dispute from time immemorial. An ordinance made by Frederic II (1194–1250) regulates for his Empire the relationship between the licensed physician and the apothecary ; it decrees that the physician " must

of our grandfathers, medicines, medical articles of all kinds, preparations, bandages and appliances were bought exclusively in a chemist's shop (if not from the dispensing doctor). Hardly anything else was offered there. But to-day a big druggist like "Boots The Chemists" stocks and sells photographic articles, ladies' handbags, fountain-pens, writing-paper, torches, soap, all sorts of perfumery, and even meals; it is in fact a department store. On the other hand, the appearance and rapid expansion of patent medicines branded and price-marked, has created outlets for such "medical" articles in other retail trades. At one-price stores one can buy such articles as aspirin, peroxide, medicated cotton wool and bandages—in great contrast to the times when even cough lozenges were regarded as the exclusive domain of the pharmacist.

Pharmacy has long been a protected trade in Britain and other countries, for obvious reasons. There must be safety measures in regard to poisonous and dangerous medicines; the profession of the pharmacist must therefore be a learned one; technical qualification must be demanded for reasons of public health; it seems only fair that a tradesman incurring the expense of learning as demanded by public authority should have certain guarantees that such expenditure will not have been in vain. There is, therefore, strong justification for licensing. The Pharmaceutical Society, founded in 1841, created the School of Pharmacy one year later—it is now the College of Pharmacy of the University of London—and degrees can also be obtained at Manchester and Glasgow. But the Society is the statutory examining body, and determines the qualification for admission

not enter into any business relation with the apothecary, nor must he take any of them into his protection nor incur any money obligations in their regard". Nor must any licensed physician keep an apothecary's shop himself (cf. James L. Walsh, *Mediaeval Medicine*, 1920, p. 206). This document shows the early clashes between the "dispensing" doctor and the "chemist". The other side of the competition—that between grocers and chemists—finds an early illustration at the beginning of the seventeenth century when the Company of Grocers is severely attacked by apothecaries in London who, through the will of James I, received their own Charter in 1617. The King very actively supported the latter, declaring that the "grocers bring home wrotten wares from the Indies, Persia and Greece, and therewith through mixtures make waters and sell such as belong to the Apothecaries, and think no man must control them, because they are not apothecaries" (cf. Rees, loc. cit., Vol. I, pp. 221–5). How far these accusations were correct it is difficult to ascertain; the King at this period was quite prepared to fight the battle for new companies which promised him financial gain. But the conflict itself reveals tendencies of dispute, which, as will be seen subsequently, are latent again in our own days. (A very useful description of the early struggles of grocers, apothecaries and doctors will be found in A. M. Carr-Saunders and P. A. Wilson, *The Professions*, Oxford, 1933, pp. 72–3.)

to the Register. By the Acts of 1852 and 1868 [1] the organisation of the Society was used by the State to secure definite standards of service for the public. Only persons on the Register of the Pharmaceutical Society may now call themselves (*a*) pharmaceutical chemists, or (*b*) chemists and druggists; the former title requires the higher academic distinction. The Register now includes some 22,000 persons who practise in Britain, the Dominions, the Colonies and foreign countries.

The sale of poisons is also connected with the organisation of professional qualification. Authorised sellers of poisons (as embodied in the Poisons List submitted by the Poisons Board to the Secretary of State) are persons, companies, firms or representatives entitled to carry on the business of a chemist and druggist. Every authorised seller of poison must register his business premises with the Pharmaceutical Society. Since 1908, companies have been confirmed in their right to be registered sellers of poisons but the business must be under the management of a registered pharmacist, as regards dispensing and retailing of poisons, and in all premises where sale of drugs is allowed there must be a qualified manager.[2]

The chemist has further privileges. The insurance committees of counties and county boroughs enter into contracts with all chemists wishing to supply drugs to persons insured under the National Health Insurance Act. The Committee publishes a list of such chemists and the insured person may go to any chemist on the list. Such chemists are even sometimes described as being "on the panel".[3]

[1] We follow here the very clear description given by P.E.P., *Report on the British Health Services*, 1937, pp. 190-2. See also Note on p. 191 below.

[2] This principle is imitated in less dangerous spheres; see the rules of the stationers' associations, quoted on p. 176 above.

[3] This arrangement under the National Health Insurance scheme has certainly given considerable protection to the pharmacists, and has certainly been to the doctors' disadvantage. Before this legislation, it was the custom in working-class practice for doctors to dispense their own medicines, but Mr. Lloyd George assigned this work to chemists on the grounds that "there ought to be no inducement for underpaid doctors to take it out in drugs". Five years later it was stated by Dr. Brend that this regulation had greatly increased the cost of dispensing and was wasteful. It was calculated that the mere change of the system involved an additional cost of £700,000 annually, as the average costs of drugs to doctors practising in towns, including dispensers' fees, was 5*d*. per head of population, while in a series of friendly societies, with an average membership of 75,000, the average cost of drugs, including bandages, dispensers' salaries, etc., was 10*d*. per member. The question gave rise to much discussion, and another arrangement followed which gave some of the capitation fee offered to the chemists back to the doctors, because, as Mr. Lloyd George now said, "the doctor is the only person we can trust to check drugs". But in spite of this arrangement, the qualities of drugs

The development of the qualification test in this profession has afforded an interesting example of how measures enacted at first merely for protecting the learned status of a profession may clear the way for organisation with the definite aim of exerting a commercial influence. Until 1919 the Pharmaceutical Society in the main performed its statutory obligations of examining and registering, protected the professional interest of pharmacists, and also served to forward some trading interests. As the latter, however, came more and more into prominence,[1] the question arose how far the Society was empowered under its charter to take those steps which the trading interests " seemed to demand ". The Society, for example, could not regulate wages or prices. Consequently the Retail Pharmacists' Union was set up. This body soon embraced the whole body of retail dealers among its members. On the other hand, the Society was eager to enlarge and widen the standards of its qualification test; within five years from 1931, the standard was to be raised to that of matriculation. The case is of considerable interest. The *Pharmaceutical Journal* once declared that " the true pharmacist is a professional man by education and training and a tradesman by force of circumstances ". His position appears at first sight to be almost unique. On the face of it, there are few trades in which a qualification test, necessary in the public interest, coincides with a business profession. In actual fact, however, it seems very likely that the pattern set for barristers, solicitors, doctors, dentists, veterinary surgeons, architects, actuaries, teachers and health visitors[2] for very proper reasons of national safety, will more and more be incorporated in other purely commercial " professions ". If a trade association can succeed in achieving this state of affairs, it is obviously by far the most powerful method of checking new entrants.

In spite of all this " qualificational " protection, however, the pharmacists are far from being satisfied with their commercial position. Their main concern is that patent medicines have

offered under the scheme became inferior; expensive drugs were eliminated from the lists, mixtures were introduced, tap water was substituted for distilled water, and finally a system of investigating practitioners' prescriptions was introduced in order to put a stop to what was called " excessive prescribing ". The dispensing by doctors had apparently provided a much cheaper supply to the public. This does not imply, of course, that the chemists took advantage of the monopoly conferred upon them by the National Insurance Act and that their prices were too high if viewed from the angle of costs and margins. Cf. for details, Dr. William A. Brend, *Health and the State*, 1917, pp. 231–5.

[1] Cf. the very illuminating description in Carr-Saunders and P. A. Wilson, loc. cit., pp. 138–40.

[2] Cf. Carr-Saunders and Wilson, *passim*.

invaded other retail outlets to their own detriment. It is not our object here to discuss whether most patent medicines are as useful as they pretend to be, or whether their prices, backed by consumers' insistence, fostered by heavy advertising, are justifiable. From the economic point of view, their main importance lies in their competitive significance, whether or not their intrinsic value is justified. Clearly much of the commercial success of patent medicines is attributable to the fact that ostensibly they are much cheaper than doctors' bills. Admittedly danger may very frequently lie in the fact that a sick man's confidence in a patent medicine may prevent him from consulting his doctor at an early stage of his illness; this is a grave danger, to which far too little attention has yet been called.[1] But the motive behind this dangerous attempt to achieve doctorless cures is for the most part that of economy. A bottle of gargling mixture, a box of throat pastilles, an application of patent indigestion cures —these "experiments", if successful, may mean a saving altogether out of proportion to the expenditure on the proprietary articles in question; the use of the patent medicine may save a doctor's fee, and it may save the time to go and consult him. These circumstances have certainly added tremendously to the sale of patent medicines.[2] They have also created considerable

[1] Any such article which promises instant relief of pains, and in fact secures this effect for some hours, may altogether mislead the patient and prevent him from taking the necessary steps (e.g. in case of appendicitis) immediately. Many patent medicines, though harmless and even efficacious in some ways, may put the patient on an entirely wrong track and divert his attention from the right cure. Overdosing with proprietary medicines may likewise be very detrimental; some proprietary medicines are in fact labelled "to be taken as directed by the doctor", a precautionary measure as well as one in the interest of the medical profession. In the main German popular health handbooks, for example, the use of proprietary medicines without the doctor's advice is strongly discouraged and should, according to the author, be limited to a very few and perfectly harmless "cures". Cf. Dr. Joseph Loebl, Knaur's *Gesundheitslexikon*, Berlin, 1930, p. 277.

[2] The point is unfortunately not dealt with in publications which should have been concerned in the matter; P.E.P., see Report, pp. 57–8, speaks of "self-medication" and calls attention to its possible mischievous effects, but does not analyse or even mention the other side of the medal, i.e. the urgent wish of many of the sick to avoid heavy doctors' fees. Nor does the Report, in scrutinising the benefits and administration of National Health Insurance, touch the question how far insufficient medical benefits and a lack of confidence in the keenness of panel doctors' treatment may induce even insured people to try some sort of "self-medication" or to supplement the doctor's prescriptions by the latter. Nor is it mentioned in Lord Horder's suggestive introduction to the popular edition of the P.E.P. Report (*Britain's Health*, a Pelican Special, 1939), nor in the B.M.A. publication, *A General Medical Service for the Nation*, 1938. If in fact "a comprehensive public medical service" were inaugurated, of course, the incentive to have recourse to self-medication and doctorless treatment would certainly be greatly diminished.

competition against the medical profession, and also the chemist. The development of patent medicines has reduced the chemist's own field of "production"; it has reduced his prescription work, patent medicines being bought without prescriptions; it has reduced his general turnover, for patent medicines can be bought at non-chemists' shops. There are frequent complaints, furthermore, that doctors tend increasingly to prescribe patent medicines, "which itself has resulted in a serious shrinkage of dispensing fees".[1] The influx of patent medicines, which are now better described as proprietary medicines,[2] though both terms are by no means legally identical, has been astounding. The number of licence-holders of proprietary medicines has risen from 42,731 in 1915 to 147,173 in 1935—it has more than trebled in twenty years.[3] Bitter comments have been made by some writers: "Quack medicine was moving from the tramp's tray into the plate-glass shop." [4] Such comments, however, are by no means generally justified. It should not be overlooked by these critics that in many cases the proprietary medicine may be compared with the sixpenny book. Many proprietary medicines of a harmless—and for their restricted purpose perfectly effective—character may appear to the buyer as a doctor's cheap edition.

Nor is the opposition of chemists and druggists entirely justifiable. They reproach the manufacturers that competition in patent medicines has been stimulated "by reason of the smallness of the licence fee enabling the manufacturers to pay for the first and sometimes for the subsequent fees".[5] Others refer to the fact that until 1908 big stores were not allowed to sell or trade as chemists, "but in 1908 Parliament foisted on our drug trade as we call it—the private chemist—the limited company and the

[1] Cf. *Pharmaceutical Journal*, 3 April 1940, pp. 232–40.

[2] Cf. Report on Stamp Duties, p. 49, where it is observed that the "legal term" of "patent medicines" has ceased to exist. P.E.P. (cf. Report, p. 58) calls the term "patent medicine" confusing, although "generally used", for under section 38 of the Patents Act it is impossible to patent a medicine as such, although there may be patents which cover the process of making it. Proprietary medicines are in fact a much larger group of preparations distinct from patent medicines in the legal sense. The inventor of the proprietary medicine keeps the formula to himself, chooses a name for it and has the name registered or trade-marked; the name remains his property permanently. Cf. also Ganzoni Report, p. 51: "The test whether a medicine is proprietary or not should be whether or not the manufacture or the name under which it is sold is private property."

[3] Cf. Evidence of the National Pharmaceutical Union before the Ganzoni Committee, p. 89.

[4] Cf. Robert Sinclair, *Metropolitan Man*, 1937, p. 44.

[5] Cf. Ganzoni Committee, p. 89.

departmental store. We never wanted it and we do not want it", declared a witness before the Ganzoni Committee.[1] *The Census of Pharmaceutical Business*, Part I, published by the Pharmaceutical Society, disclosed that the sales of proprietary medicines now constitute the most important of the eight main groups of pharmaceutical sales; with private dispensing ranking as low as sixth and N.H.I. dispensing still lower. This state of affairs is deplored as the result of competition with "non-professional retailers".[2 and 3]

> We wish to draw attention to the fact that the trade in patent medicines outside the chemist channel is parasitical in every sense of the word and has been since its inception 60–70 years ago,

emphasised the Chairman of the Pharmaceutical Union before the Ganzoni Committee.[4] But all such opinions take no account of the fact that it has been the policy of many manufacturers in this branch, as we have explained, to grant most liberal margins to retailers of branded medicines, of whom chemists are by no means the least important. Nor is any attempt made to relate the price policy of the retail trade association to its consequential stimulus to new and profitable competition. The "unprofessional" trader has to bear the brunt of the complaint, and in this background a policy for further protection is developed.

This was very clearly brought out by the evidence before the Ganzoni Committee. The National Pharmaceutical Union ". . . on behalf of chemists, who are rightful sellers of medicines", drew attention in its memorandum to "the enormous increase of vendors". It called attention to the enormous number of "competitors" "who have never undergone the expensive training required by a chemist". The memorandum observed further:

> Chemists contend that the licence fee should be more in keeping with the value of the business done by those persons and should not be low enough to become a gift from manufacturers to retailers.[5]

It was further emphasised that the chemists were distressed by their position, as "they had actually to maintain the essential service of medicine to the nation", while the development of patent medicines "has been to a considerable extent at the expense

[1] Cf. Evidence, Q. and A. 753.
[2] Cf. *Chemist and Druggist*, 20 April 1940, p. 304.
[3] Cf. F. C. Wilson, *Pharmaceutical Journal*, 13 April 1940.
[4] Cf. Evidence, loc. cit., pp. 92–3.
[5] Cf. Ganzoni Report, pp. 89–90.

of the drug sales of the chemist ".[1] No fewer than 135,000 sellers were " outside the ranks of the regular chemists ".[2]

> What I suggest [said a witness for the chemists], is that where the law of the land calls for a special knowledge and skill in carrying on a particular occupation that law should, in addition, protect the public from unqualified practitioners in that calling, whether it be a doctor, chemist or any other person.

From this argument two points emerge. First is the encroachment upon the chemist's trade, which, in the opinion of its representatives, demands particular protection. Why, a witness was asked by the Ganzoni Committee, can " the chemist not make a profit out of patent medicines whereas the outside man can " ? The answer was given :

> We have to compete with traders who are handling ordinary household requirements, required in every household every day and all day, with the necessary result that their turnovers are very large.[3]

The same story could be told, however, by many retailers who are not druggists and feel their competition—especially that of the big " department store " druggists. The maker of ladies' handbags could complain, so could the perfumery shop, so could the sellers of toilet articles, so could the retailers of photographic articles. So could, in war time, the " professional " sellers of gasmask containers. None of these goods bear any relation to the chemist's trade, but chemists sell them. The witness was asked about soap, water-bottles and lime juice, which the druggist and chemist might sell. He pointed out that, as for soap, it was " only " the toilet soap, which chemists sold, and not household soap ; the witness also declared that most of such articles had been introduced by chemists.[4]

Other retailers would certainly claim with some justification that such articles were in their " legitimate " domain of business. Furthermore, it should not be argued that such side-lines play a secondary rôle in the chemist's shop of to-day. We read in an article entitled " Pharmacy as a Career " that

> It has to be remembered that the sale of side-lines constitutes the chief business of the retail chemist, and so extensive are the ramifications that experience gained during apprenticeship days is not nearly a wide enough basis upon which to place the responsibility of proprietorship.[5]

[1] Cf. Ganzoni Report, pp. 92–3.
[2] Ib., p. 95.
[3] Cf. ib., A. and Q. 767.
[4] Cf. ib., Q. 767–9 and 804.
[5] *British Pharmacist*, Aug. 1940, p. 312.

Even the official pamphlet on pharmacy in the Choice of Careers Series, issued by the Stationery Office, stresses the change brought about and the tendency to reduce the professional side of the vocation. "Probably the principal sources of profit," it was observed as early as 1919, "are side-lines usually associated with the chemist's shop such as the sale of toilet and photographic requisites." [1] It is somewhat ironical that the admonition of more "businesslike" routine by pharmacists and chemists comes from a trade which, on other occasions, stresses vigorously its "professional" character.[2] How are such comments to be reconciled with the constant assertion that the pharmacist differs from other tradesmen by his special attention to the health service of the nation? Should such service not include the duty to ensure that the less well-to-do classes spend as little as necessary on drugs and not—to use an American phrase—to "merchandise" them "upwards"? This attitude cannot be overlooked when chemists put forward complaints of "encroachment".

The second point which emerges from the chemists' complaints is the desire to see the rules for qualification strengthened. If most drugs were poisonous the problem would be simpler. But, as a witness explained to the Ganzoni Committee,

> as regards 90% of the prescriptions we dispense, any man could dispense them, since they do not contain poisons, if he knew how to do it, but that is where our training, skill and knowledge comes in.[3]

This being so, the legislation and collective organisation created to meet the dangers connected with poisonous medicines does not offer the comprehensive protection, through qualification, which is desired. In order to get out of this impasse, it has actually been proposed that all medicines should be treated as if they were poisonous. This proposal embodies a series of

[1] Cf. Carr-Saunders and Wilson, p. 138. In his inaugural address to the Annual Meeting of the British Pharmaceutical Conference in 1941, the chairman observed "that pharmacy was moving in the direction of commercialisation"; medical preparations made by the large manufacturing houses were taking the place of those which pharmacists used to make themselves. Cf. *The Times*, 17 April 1941. A detailed list of "side-lines" of the pharmacist's business may be found in the *Pharmaceutical Journal* of 12 April 1941, pp. 132–3.

[2] The Retail, now the National, Pharmacists' Union, formed a Business Service Section, the chairman of which once described salesmanship as "the weakest weapon in the pharmacist's armoury". "If a customer," he said, "walks into a chemist's shop and asks for Epsom salts, he will probably be asked: 'Yes, sir, about two pennyworth?' If he walks into a tobacconist's and asks for a packet of cigarettes he won't be asked, 'Yes, sir, twopenny Woodbines?'" Cf. Carr-Saunders and Wilson, loc. cit., p. 140.

[3] Cf. Ganzoni Committee, A. 727.

others which would mean an entire reorganisation of the chemist's trade on frankly monopolist lines; it is worth while to quote it. Its author, Mr. F. C. Wilson,[1] regards his plan as being only a potential line of development, as he considers the chances of getting the desired legislation as "slim", while "legislation of a more general nature" would probably show certain realisable "prospects". Nevertheless, his plan may be considered as the final goal of a good many people in the chemists' trade; if this were not the case, his proposals would hardly have found their way into one of the leading trade journals.

Mr. Wilson envisages:—

(1) That pharmacists might attempt to re-establish by legal action, coercion or agreement a monopoly in leading pharmaceutical lines. This may include:

(*a*) Prevention of further extension of dispensing by doctors.

(*b*) Prevention of sales, or prevention of the extension of sales, of pharmacy lines by traders. This would mean the prevention of sales of pharmaceuticals by other traders, and this again involves:

(i) Legal restriction on the sale of medicines similar to the restrictions on the sale of poisons.

(ii) Agreement of lines of demarcation with the retailers' organisation.

(iii) Persuasion or coercion of manufacturers to confine their sales to pharmacists.

(2) That pharmacists may seek to improve the standards of life of the profession by restricted entry and limitation of premises.

(3) That pharmacists could take steps to improve the efficiency of retail pharmacy in conformity with the trend of economic progress in retail organisation.

This is what Mr. Wilson sees as "potential lines". We see that the extension of the qualification test plays an important part in them. For if point (1) (*b*) (i) became effective, every seller of pharmaceutical articles would be under the obligation to pass the examinations prescribed; for every trader in drugs would then have to become a registered pharmacist. There can be no doubt that behind all such suggestions is the pharmacists' recognition that the chain and general store make constantly growing inroads into their "own garden". This does not only mean that the existing independent pharmacists see their profits threatened, but also that the chance for the employed pharmacists to become independent grows dimmer.

[1] Cf. *Pharmaceutical Journal*, 13 April 1940, pp. 239–40.

> Formerly most pharmacists could hope some day to become the owner of a business. It is not possible to say what proportion of pharmacists now remain employed all their lives, but it must be large,

write Carr-Saunders and Wilson.[1] Proposals of this kind to extend privileges by strengthening the qualification test are reminiscent of the strengthening of similar tests in the guild period when the trade became overstocked and interlopers and outsiders were increasing. Mr. Wilson seems to realise fully that a monopoly of chemists in pharmaceutical articles would encroach upon the vendors of proprietary medical articles as organised in the Proprietary Articles Association of which, as we have mentioned before, the fully organised retail chemist is an indirectly affiliated member through the National Pharmaceutical Union. It is to be wondered how the " line of demarcation " would in practice be defined. But however this may be, Mr. Wilson's proposals show how the qualification test might be regarded as a link in the monopoly process.[2]

Restriction in the photographic trade is on similar lines. There are, in fact, some links between the pharmacists' and the photographic retailers' trades. The photographic industry also claims that it demands specialised knowledge from the retailer. The retailer, so the Committee on Restraint of Trade was told, objects to the competition of a trader who " makes no attempt to deal with the more difficult parts of the trade—the giving of advice and instruction to purchasers. The manufacturers, we understand, share to a great extent the views of the retailers about the disadvantages of having the retail trade in the hands of inexperienced and unsuitable persons who do not help to popularise photography by giving the necessary advice and service to the public." It almost looks as if the trade's object were to " protect " amateurs against making bad photographs. The dealers and the manufacturers have consequently established a Joint Council, on which they are equally represented, to deal with applications

[1] Cf. loc. cit., p. 138.

[2] Recommendations of this kind are by no means solely the ideas of some individual writer. Attempts to restrict the scope of sale of medicines and drugs are well known to the co-operative societies, for instance. One may remember the so-called " Chemists' Friends Scheme " which had for its object the selling of certain goods only through chemists' shops. It was very distinctly directed against the co-ops, for it proposed that goods usually sold by chemists would not be available to chemists who pay discount or dividend. If the scheme had been successful there would have been serious interference with the sale of drugs from grocery and drug shops (cf. Co-operative Union Ltd., Annual Co-operative Congress 1936, Manchester, p. 154).

from persons who wish to set up as dealers in photographic goods. Applicants conforming to certain conditions—those, for instance, who carry on a retail chemist's or optician's shop—are more readily admitted as approved dealers than others. This means that the restrictive measures are indirectly linked up with those relating to the trade we have just analysed before, a point which apparently escaped the attention of the Committee on Restraint of Trade.[1] Qualification as a chemist and pharmacist is a preferential qualification (*de facto*, so to speak) for dealing with photographic articles. This is certainly no negligible advantage against other newcomers to the trade.

The attempt to restrict entrance to a trade by creating tests of qualification has also been made in the undertaking trade. Associations in this trade make use of price lists and certain exclusive agreements. Certain undertakings combining the funeral business with the ownership of carriages and hearses[2] economically dominate the trade. Strong measures have been taken to encourage undertakers to join the associations, but the ultimate aim of the organised trade has always been statutory registration. In 1925 a scheme was prepared for that purpose, but abandoned as having no prospect of success. About thirteen years later the idea was revived, and a Funeral Directors Registration Bill presented by Lord Horder to the House of Lords. The name of Lord Horder at once suggests that the arguments put forward for this measure were largely backed by medical and sanitary considerations. Lord Horder had become President of the Council for the Disposition of the Dead. This organisation was closely connected with the National Association of Funeral Directors, the Federation of Cremation Authorities in Great Britain, the Coffin Furniture Manufacturers Association, the British Institute of Embalmers, and a number of learned institutions.

Lord Horder explained to the House of Lords that it was anomalous that, while there was health legislation for the living and legislation supervising the burial, there was "an important period both from the point of view of the public health and from that of sentiment" when no one was responsible; during this period the services of the funeral director were necessary, but there was no legal responsibility as regards his duties. During recent years, Lord Horder continued, the profession of funeral directors had made " a great advance in the knowledge, ability

[1] Cf. Report on Restraint of Trade, pp. 21–2.
[2] See above, pp. 142–3.

and capacity of undertakers". With such progress still going on, some improvement in the status of undertakers seemed desirable, and this explained the Bill.[1] Funeral directors had done much to prepare the way for the reappearance of the registration scheme, now backed by arguments based on sanitary needs. But there was very little concrete evidence. The Council for the Disposition of the Dead itself had not been able to discover many malpractices. A Medical Officer of Health was asked for his opinion by the 1937 Annual Conference of the National Association of Funeral Directors. He suggested the desirability of a minimum standard of knowledge of anatomy, of pathology, of the more common diseases, of modern methods of sanitary treatment of the body. However, when closely interrogated about the alleged widespread evils in these matters, he seemed unaware of their existence. On the contrary, when asked, "Is it within your knowledge that any funeral director has actually suffered through contact with germs in the course of his work?" he had to reply (though adding that he was not a general practitioner) that, "personally he had not come across any case where there had been death"; he asserted also that "smells" were "not dangerous". He explained that even the use of special disinfectants was in general quite unnecessary.

Nevertheless, the Bill contained a section which empowered the setting up of a Board consisting of four persons to be nominated by the Minister of Health and three persons by the National Association of Funeral Directors and other trade associations,[2] which would be empowered to prescribe examinations as a condition for admission. The qualification to be demanded would probably far exceed the existing professional "education" of the average undertaker. In the words of Captain Elliston, M.P.,

> the higher training of undertakers might mean an extension of methods which may not command universal approval. There are many who contend that ideal methods of disposal of the dead should do nothing to delay disintegration of the body, and regret the efficiency of modern methods of embalming.

The embalmers, of course, play their part in the support of special training in what is sometimes called "progressive" methods of burial.

[1] Cf. House of Lords Debates, Vol. 109, Nr. 70, 2 June 1938, pp. 853 sqq.

[2] These associations were: Mersey District Funeral Directors Association, Birmingham Funeral Directors Guild, Potteries and District Funeral Furnishers Association, Bournemouth and District Undertakers Association, Burnley Funeral Undertakers Association.

There can be no doubt that the associations envisaged a reduction in the numbers of undertakers through the test of qualification. As Mr. G. A. Hotter, of the National Association, explained :

> . . . it seems possible that in the course of time the number of actual funeral directors or those responsible for the conduct of funerals, whether whole-time or in combination with other sections of industry, will be reduced, and that to qualify for recognition it will be necessary to prepare in a manner not at the moment operative. The question that may eventually arise will be whether as a National Association we should be on the right lines in trying to persuade everybody now styled as undertakers to join or whether it is not advisable to confine our efforts in organising among those who appear to be eligible for qualification if State Registration is obtained.

It is not surprising that many undertakers had grave apprehensions of their future under such conditions. A member of an undertakers' association declared that, though he had approved of the Bill as a " loyal member ", he believed that it would be the " death knell " of his business, for he would not be able to undertake as much study and preparation as would now be demanded.[1]

The Bill did not get a friendly reception in the Lords. Most of those who took part in the debate were against it, though not denying Lord Horder's well-meant intentions. Lord Strabolgi emphasised that the Bill would " create, or tend to create, a monopoly of those who perform the last rites of the dead ". Lord Samuel pointed rightly to the interests of the part-time undertaker who would find it difficult to conform with the regulations. The Earl of Munster, speaking for the Government, declared that " His Majesty's Government know no reason which would warrant the conversion of this trade into a closed corporation ". Lord Horder, who withdrew the Bill, declared that " there is no restriction imposed in any clause of this Bill upon an undertaker offering his services for what price he wishes ". He had apparently overlooked the fact that undertakers' associations have price lists and exclusive agreements, and that any strengthening of the associations against outsiders would necessarily result in a strengthening of their quasi-monopolist regulations.

[1] Cf., for all details, Sir Arnold Wilson and Professor Hermann Levy, *Burial Reform and Funeral Costs*, 1938, pp. 152–66 ; the book was extensively quoted by Lord Strabolgi and the Earl of Munster in support of their opposition to the Bill.

The chemists' trade and that of the undertakers, who are responsible for burying some 450,000 corpses annually at probably not less than £8–9,000,000 cost, are more important than many humbler trades. In the latter, however, we see the same aim of qualification tests. An association of shoe repairers, concerned by unskilled competition, put forward a demand to stop it. The "repairers", so it is stated, have sometimes "no qualification" at all. The National Federation of Leather and Grindery Merchants, the association suggests, should be asked "to give an undertaking that only accredited establishments will be supplied".[1] Hairdressers are confronted by the same "evil". An elaborate apprenticeship scheme has long been the aim of hairdressers' trade organisations. It was mentioned as one of the main objects of the Retail Hairdressers Association formed in September 1940.[2] It almost seems as if in future every part of the human body, living or dead, will be in some way "protected" against the evils of "unlearned" tradesmen. The examples which we have been able to present leave no doubt that admission to a trade by examination and proof of technical efficiency forms a major part of the programme of trade associations. Whatever its effects upon consumers may be, it must certainly be regarded as a very effective means of limiting retail trade competition.[3]

[1] Cf. *The Shoe and Leather News*, 22 Feb. 1940, p. 60.

[2] *The Hairdresser and Beauty Trade*, 27 Sept. 1940; ib., 3 Jan. 1941, p. 15; also 22 Nov. 1940: "The apprenticeship system is the solution."

[3] A very elaborate enumeration of the competitive evils complained of by retailers in their wish to see their trade reorganised on non-competitive lines is found in the *Baker and Confectioner* of 27 Dec. 1940. The writer complains that legislation affecting the sale of commodities after certain hours is being defeated "by all kinds of devices". "After the tobacconists are closed cigarettes can be obtained from the public house next door; when the baker is closed the chandler round the corner will have a loaf." He further complains about club trading, chain stores, hire purchase, price-cutting, the public demand for cheapness at the expense of quality and about the inexperience of a large number of people entering the "specialised" [*sic!*] profession of shopkeeping. He thinks that "a remedy might be found in registration and licensing, but it would have to embrace all trades and not be at all like the registration now operating under war conditions". This is another example of the comprehensiveness of the aims in question.

NOTE (*to pages* 180–185 *above*)

Some changes in the position of the trade interests concerned in the sale of medicines will result in connexion with the Pharmacy and Medicines Bill, 1941; see H.C. Debates, 8 July 1941; also *Economist*, "The Druggist's Dilemma", 12 July 1941.

PART VI

TRADE ASSOCIATIONS AND PUBLIC INTEREST

CHAPTER 17

THE BRITISH LEGAL ATTITUDE

Now marke my wordes thou marchaunte man
Thow that does use to bie and sell,
I wyll enstruct the, if I can,
How thou maiste use the callynge well.

. . . .

The ende why all men be create,
As men of wisdome do agre,
Is to maintaine the publicke state
In the contrei where thei shal be.

Apply thy trade there, I sai,
To profit they countrey with al ;
And let conscience be thy stay,
That to pollinge thou do not fal . . .

ROBERT CROWLEY, *Voyce of the laste trumpet . . . calling al estats of men to the ryght path of their vocation*, 1550.[1]

QUASI-MONOPOLY ORGANISATION is no longer confined to industry ; it has invaded retail trade, and has been fostered by manufacturers' organisations so far as the latter have been in a position to link up their cartels with retail trade associations to uphold or introduce price-fixing agreements and trade practices. Similar developments have taken place in all other industrial countries ; in most of these countries, cartel and trust legislation was introduced to control the action of industrial combination in its limitation of competition, and such legislation automatically covered retail trade associations to some extent as well.

In England the question of the expediency of such legislation was first discussed by the Report of the Committee on Trusts (Ministry of Reconstruction) in 1919. This discussion related mainly, as we have pointed out before, to industrial combination.

[1] Quoted by Prof. H. M. Robertson in *The Rise of Economic Individualism.*

The problem of retail trade combination was not very apparent, for its development was only just beginning. The legal attitude adopted by this Committee is of value, however, for if certain measures envisaged by it had been adopted, a very important new type of industrial administration might have evolved, and would immediately have influenced retail trade organisation. The next official discussion of the problem arose when the Board of Trade appointed the Committee on Restraint of Trade in 1930, which reported in 1931. This committee, in contrast to that on trusts, was confined to the consideration of " trade practices which result in withholding from particular retail traders supplies of goods in which they deal ". It was in fact the first official investigation into the legal aspects of quasi-monopolist organisation in the retail trade.

" Notes as to the Law relating to Combinations " were prepared for the Committee on Trusts by Sir John Macdonnell. He spoke of four periods of development. The first was that of hostility towards monopolies (mainly in the seventeenth century) and their abolition.[1] The second was that of " limited individualism, in which the efforts of the Courts were to maintain competition ", in view of the still-existing remnants of the guilds. The third period was called by Sir John that of " intense individualism " ; the common law as it related to " restraint of trade " was strictly upheld on the assumption that it would be good if the most efficient business survived in the struggle of competitors. The fourth stage Sir John defined as that of our own day:

> Even as to combination in trade the law of restraint of trade begins to be stated with modifications. The necessity of the existence of certain monopolies became apparent. This may be designated as the fourth period. It is one of transition ; it is the present stage.[2]

It emerges that there is no positive legislation in England dealing with industrial or trade combination. The only legal measure to be applied is the common law doctrine of " restraint of trade ". This is a very meagre measure indeed for the purpose of suppressing general trends of non-competitive trade regulation, though it has probably led to an intensification of the trust movement in British industry as compared with cartellisation. Contracts in restraint of trade are in principle unenforceable, but they are not actually illegal unless they involve an illegal act. In many cases

[1] The economic history of these monopolies and the fight for their abolition has been fully described by the author ; see Levy, *Monopolies, Cartels and Trusts*, 1927, first chapters.

[2] Cf. Report on Trusts, p. 31.

such " gentlemen's agreements " were not a reliable legal basis on which to build lasting agreements, and trustification through amalgamation was preferable. But, in fact, a coach and four has been driven through the doctrine: the modern attitude is that the test that should determine the validity of contracts in restraint of trade should be whether they were considered reasonably necessary to protect the interests of the parties and not unnecessarily harmful to the general public.[1] As Professor John Hilton puts it:

> In recent years . . . the courts have shown a perception of the fact that free competition is not necessarily in the interests of the community and that, on the contrary, competition may be accompanied or followed by serious disadvantages. There has consequently been a tendency for the law relating to combinations to be stated with modifications.[2]

English jurisdiction has always shown a wise flexibility in interpreting legal doctrines which may have lost their original economic or social background. When the age of free competition was vanishing and the age of industrial combination, now enlarged by that of retail trade combination, was ready to take its place, judges were quick to recognise certain economic necessities which apparently led to a very different interpretation of the evils of quasi-monopolist regulation. As early as 1914 the late Lord Haldane, as Lord Chancellor, declared in a case that

> unquestionably the combination in question was one the purpose of which was to regulate supply and keep up prices. But an ill-regulated supply and unremunerative prices may, in point of fact, be disadvantageous to the public. . . . It must always be a question of circumstances whether a combination of manufacturers in a particular trade is an evil from a public point of view.[3]

In the next four war-years that followed, the development of industrial combination in British industry progressed with great rapidity. It is therefore not surprising that Sir John Macdonnell felt quite justified in following the line so definitely indicated by Viscount Haldane. Sir John tried to bring the new doctrine of the possible public advantages of quasi-monopoly into very close connection with what he called " modern economic conditions ";

[1] Cf. Nordenfelt *v.* Nordenfelt Guns and Ammunitions (1894), Appeal Cases, 535.

[2] Cf. Hilton, in *Enc. Brit.* under Trusts.

[3] Cf. North Western Salt Co., Ltd., *v.* Electrolytical Alkali Co., Ltd. (1914), Appeal Cases, 461, 469.

he enumerated eleven different respects in which modern industrial organisation differed from that known before, hinting at the sometimes wasteful competition, at the redundancy of plants, at the possible advantages of stabilised prices, at the possibilities of a greater economy by amalgamations, at the financial control of industry by joint stock enterprises with " drawbacks and advantages ", and so on. He very properly pointed to the difficulties arising between purely legal and economic views. " In the long run," he explained, " Courts have followed, though slowly, the teaching of economists." This was even done by " pursuing a course of conflict with the general policy of the law. By their decisions as to restraint of trade the Courts had sought to maintain competition with a view to prevent the creation of monopolies ". On the other hand, by the principle laid down in the well-known Mogul case and in that of Allen *v.* Flood,[1] they had legalised what was in practice " the most effective mode of destroying competition and creating monopoly—i.e. undercutting and other devices for destroying rivals in trade ". Sir John recognised the tremendous difficulties which would face judges if they were asked to decide on the " restraint of trade " basis, on the one hand, and to take into account such economic considerations as the fairness of prices and the effect of combinations upon them, on the other, apart from many other circumstances and conditions which even trained economists could not easily, and perhaps could never definitely, ascertain. How, for example, was the judge to decide whether a monopoly was " productive of deterioration in quality " ? Sir John envisaged a way out of such difficulties by the establishment of a Bureau of Corporations, such as had been established in 1903 in the U.S.A., a suggestion which should be recorded, for now, twenty years later, there has been not the slightest attempt to create such a body in Britain.

The recommendations of the Report itself were wide and specialised, and it is worth while in view of the present development of quasi-monopolies to summarise them in some detail.[2]

It was suggested that the Board of Trade or a special department to be created for the purpose should keep itself fully and continuously informed about the " nature, extent and development " of combinations, in industry or trade, " in so far as they tend to the creation of monopolies, or to the restraint of trade " ; complaints were to be investigated ; where it was thought that

[1] Mogul S.S. Co., Ltd., *v.* McGregor, Gow & Co. (1889), 23 Q.B.Div. 598, and Allen *v.* Flood (1898) A.C.1.
[2] Cf. Report on Trusts, p. 12.

"the public interest" was "adversely affected" a Tribunal was to be empowered to investigate and to report; the Tribunal was to be appointed by the President of the Board of Trade, and among its members the Co-operative Movement and the Trade Unions were to be represented; the Tribunal should be entitled to order companies and others to furnish particular information, to investigate the operation of any organisation, and to publish "immediately on the conclusion of each inquiry" if "acts injurious to the public interest" had been committed, while it would be the duty of the Board of Trade to make recommendations as to State action for the remedying of any grievances which the Tribunal might find to be established.

The Report, which among other signatories included the names of Mr. Ernest Bevin, Mr. Sidney Webb and Prof. J. A. Hobson, was supported by detailed studies of trade organisations and combinations by John Hilton, who under the head of "Public Supervision" came to conclusions similar to those of the Report itself. An "Addendum" signed by Ernest Bevin, J. A. Hobson, W. H. Watkins and Sidney Webb went much further than both Reports; it made recommendations as regards the fixing of maximum prices, control of important industries and trades with monopolist tendencies by the co-operative movement, municipal enterprise or State ownership, all this bordering very near to State Socialism. While such radical proposals could not be expected to have any actual effect upon policy, it is surprising to note that the Report itself, with its moderate suggestions, had no effect at all upon legislation. Its contents were noted with interest by learned economists; it confirmed their previous view about the matter, and once more showed abundantly that a free trade country was by no means immune from cartels, trusts and trade combination. But here the matter rested. No new administrative phase emanated from the findings of the Committee.

But in face of the recommendations of the Committee, it is bewildering that twelve years later the Committee on Restraint of Trade, appointed by the Board of Trade, made not the least attempt to carry on from the point at which the Report on Trusts left its readers. It may be said that this Report dealt with the retail trade only. But retail trade associations, as the Committee knew, are largely dependent upon industrial combination, and to some extent its offspring. Industrial combination is the pillar of their price policy, the helpmate for their policy of price-maintenance, and in many cases closed the last and final gap of quasi-

monopolist organisation ; they had adopted the methods used by cartels and trusts as regards exclusive agreements and boycotting clauses, tying agreements and fines ; yet the Committee came to the conclusion that nothing was to be done at all :

> . . . we are not satisfied that if a change in the law were made there is any reason to think that the interests of the public would be better served,

the Committee asserted in its general conclusions,[1] after having declared before that

> where a particular form of interference is asked for we conceive that the burden of justifying it upon grounds of public policy as distinct from individual grievances lies upon those who advocate it, and that we ought only to recommend a change in the law if we were satisfied that it would be in the public interest.

This somewhat sybilline dictum makes it appear as if there were in fact a law regulating trade combination ; of course there is no such law.

The doctrine of " restraint of trade " cannot be regarded as such a law ; it is only passive in its effect, for it does no more than make agreements in restraint of trade unenforceable. It has neither punitive nor administrative significance. It can become dangerous to combines only when it is coupled with unlawful actions—such as conspiracy. But there again it is necessary to prove that the acts are unlawful either in their objects or in the means of performance.[2] The idea which was originally the reason for this doctrine—the need to prevent one person or one group of persons from cornering the market—has faded away. The notion that it should be unlawful for persons to combine to agree not to trade with others, or to try by trade practices, such as stop-lists, to prevent others from trading with them, has already been gravely doubted by Sir Frederic Pollock, when he wrote :

> The common law right of dealing with whom one likes must include the right of not dealing with customers one does not like, which does not cease to be a right merely because exercised by several persons jointly.[3]

Therefore, when the Committee on Restraint of Trade speaks of a " change in law ", such " change " could be presumed only if

[1] Cf. Report on Restraint of Trade, p. 34.
[2] Cf. for interesting American examples, Kirsh, loc. cit., pp. 227 sqq.
[3] Cf. Sir F. Pollock, *The Law of Torts*, 1929, p. 337.

the present state of lawlessness were regarded as the condition to be " changed ". The only " change " can in fact be the drafting of a law.

The Report on Trusts accepted this in its administrative proposals. The Committee on Restraint of Trade preferred to make no proposals at all ; indeed, it did not even refer to the detailed recommendations made in the Report on Trusts—nor even comment critically upon them. The Committee considered that the legal attitude, so well expressed by Sir Frederic Pollock, was perfectly adequate and fully justified in action : why should not freedom of contract also be regarded as the freedom to combine, just as in the case of trade unions ? The Committee in fact took the view later expressed by an American writer :

> England, sooner than America, had judicially recognised a fact of modern industrial society, that more and more the individual has shifted from being merely a human atom in a political group, and that through organisations and associations he is realising his true personality.[1]

Such notions may be correct from the strictly legalistic viewpoint. If a trade organisation is proved to be in the interests of the trade or industrial group, and if such combination can be regarded as being in the public interest, then surely it would not be wrong to give the majority the right to force outsiders into its rule. In those circumstances, for the State to compel the majority to disband its association and destroy the trade agreements might be considered as an interference in favour of " compulsory competition ".[2] It is difficult to decide what should be regarded as the criterion for the fulfilment of those conditions. What is the interest of a particular trade group ? What is their " majority " in regard to such interest ? Is it the great number of small traders, or is it the firms which do the greatest amount of business ? Still more important, what *is* the interest of public policy as regards such associations ? The Committee on Restraint of Trade was well aware of this difficulty. It gave expression to its reluctance to give judgment by putting " public interest " in quotation marks, and garnishing its sparse remarks with many limitations. The weakest part of this weak Report is the point at which the reader is told that the Committee did not think it necessary to " define very [!] precisely [!] the meaning which we attach to the words ' public interest ' in matters of this kind ".

[1] Cf. Kirsh, loc. cit., p. 228.
[2] Cf. also Levy, *The New Industrial System*, 1936, pp. 261–2.

Yet at the same time the Committee thought it necessary to consider whether " in existing conditions the trade practices operate in such a way as to produce effects harmful to the efficient and economical service of the public ". But, alas, what *is* " harmful ", what *is* " efficient ", what *is* " economical " ? The Committee did not explain.

The Committee did not even explain what the different views of different sorts of witnesses who had been heard might have been. Big and " modern " retail stores may look upon their smaller competitors as disgracefully inefficient. The latter, however, may regard the former as despicable intruders. Prices may be " fair " if they secure a living to the less efficient by allowing good margins ; they may be regarded as harmful, in being so, to the interests of the consumer ; they may even be considered as harmful to the trade itself, as we have seen, if they attract too many newcomers, while too narrow margins may favour the stronger against the weaker. The Report on Restraint of Trade should have come to the conclusion that trade associations may be a constant source of such conflict, and that this alone would justify some control. But to do this it would have been necessary to enter into a very minute analysis of the costs of certain trades, of the differences in the costs of management of various types of units, of the justification of certain margins in particular trade groups, of the real meaning of the terms " efficient " and " less efficient ". The Committee did not undertake in its Report to raise these questions. It was apparently quite satisfied with the statement that freedom of contract implied the protection of trade agreements under trade association rule, however quasi-monopolist in character that might be. It stressed the fact that this point of " freedom " of contract was as important in relation to the " public interest " as the question of the economic effect of such contracts. It did not take the wise view expressed by Sir John Macdonnell, that Courts would be unable to deal with " complicated economic problems ".

It would have been more appropriate if the Committee, instead of uttering vague general remarks about " efficiency " and the " public interest " had clearly explained first, that such effects are difficult to judge, for they imply certain standards of knowledge about costs, prices, and profits which are difficult to obtain ; second, that for this purpose a Royal Commission with wide powers of inquiry and with full publication of evidence should be called in ; third, that any conclusions as regards the " public interest " involve a clear presumption whether quasi-monopolist

organisations as such contain the permanently latent possibility of doing harm; fourth, if such presumption is made, and if retail trade associations are proved to be quasi-monopolist in character, whether legislation and administrative control should be deemed advisable, and in what form to be suggested. The Committee refrained from such recommendations; it remained far behind the Report on Trusts. It was apparently a relief to the Committee to refer to "hardship in individual cases" and so to exonerate trade associations in general from blame. It often happens that grievances brought forward against certain institutions and defective laws are met with the contention that they only relate to "hard cases". Social insurance evils in Britain are constantly belittled on such grounds. It is disturbing to see such a contention seriously put forward by official Committees as a proof that *in general* all is for the best in the best possible of worlds.

The British judiciary has therefore not been placed in the difficult position of having to scrutinise complaints about "restraint of trade" by trade associations on the ground that the latter had exercised a quasi-monopolist domination over others. As Professor Macgregor aptly remarks: "A 'higher organisation' in industry looks the same outside as a monopolistic construction."[1] Judges may have been well aware that it no longer appeared to conform with ideas of learned economists to suspect of evil monopolist designs an organisation of traders regulating prices and trade usages, but claiming to be of a high organisational value to their members as well as to the community. In any case, to prove such designs was outside the sphere and potentialities of the Courts. Aims which were wholly non-economic, supported on important grounds of "public interest"—such as the sanitary plea of the Undertakers' Association for registration—may well coincide with commercial aspirations of a quasi-monopolist character. It is perfectly understandable, therefore, that the Courts decided to deal with cases on the basis of a strictly legal logic, leaving out any consideration of the economic side of "public interest", but keeping in mind that such associations and their rules might in no way contain the condemnable features of so-called "monopolies", but indeed be a form of "higher organisation".

This attitude found a very definite expression in the case Thorne *v.* Motor Trade Association.[2] This was a case of far-

[1] Cf. D. H. Macgregor, *Enterprise, Purpose and Profit*, 1934, pp. 164 sqq.
[2] Cf. Thorne *v.* Motor Trade Association (1937), A.C. 797.

reaching importance. The trade association required members or other dealers to sell their goods at fixed prices. A " stop-list ", the working of which has been described,[1] had been established; it provided that members might pay a fine instead of being put on the stop-list. A dispute had arisen between the association and a member. It was argued for the appellant member before the House of Lords that

> to say to a man, " If you do not pay I will put you on the Stop-List and thereby deprive you of your calling " is a menace within the meaning of the section of the Larceny Act.[2]

But Lord Atkin did not agree with this contention. He emphasised that to his mind

> the key to the situation is to be found in the fact that to put a man's name on a stop-list in such circumstances as the present is not a wrongful act: does not infringe any right of the person so pilloried.

He quoted two other similar cases and proceeded:

> It is an act done in lawful furtherance of business interests and though done in combination is done without express intent to injure the person whose name is published.

His Lordship explained:

> It appears to me that if a man lawfully in the furtherance of business interests does acts which will seriously injure another in his business he may also lawfully, if he is still acting in furtherance of his business interests, offer to accept a sum of money as an alternative to doing the injurious acts. He must no doubt be acting not for the mere purpose of putting money into his pocket, but for some legitimate purpose other than the mere acquisition of money. In the present case the rules empower the Council and the Committee to demand sums " within limits " as an alternative to the stop-list. It is obvious that a reasonable construction of the rules leads to the inference that the intention is to deter persons in the trade from violating recognised conventions as to maintaining list prices and the like: to give the Council power to preclude all traders from commerce with offender: but to allow the Council to mitigate the grave penalty of stop-list by substituting a money payment and an undertaking not to offend again. If the Council bona fide exercised this power with the bona-fide intention only of carrying out this trade policy, in my opinion they would not be demanding the payment without reasonable and probable cause.

[1] See above, Part IV, Ch. 13.
[2] Section 29 (1) of the Larceny Act of 1916.

Lord Wright declared in concurring,[1]

> That the stop-list is not unlawful in itself was not contested, at least if prepared and published in good faith. Each member of the respondent Association is free in law either to supply or not to supply his goods to any particular individuals; hence he may lawfully exercise his freedom not to supply his goods to any person named in the stop-list. Any agreement or combination of the members or of the respondent Association and the members not to supply the goods to persons whose names appear in the stop-list is also lawful, provided that the intent of the combination is to promote and protect the legitimate trade interests of the respondent Association and its members and is not a combination wilful to injure.[2]

The legal logic of this declaration can certainly not be disputed. But it becomes evident that such reasoning eclipsed any further claim against the legality of a combination if it used its power to monopolise the trade.

This judgment undoubtedly further restricted what might hitherto have been regarded as a legal barrier against trade practices exercised by trade associations. The legal logic is clearly understood. An association may make rules binding their members to conform with such practices—list prices, boycotting clauses, exclusive agreements—and may inflict reasonable fines on members or exclude them from membership. There is no legal reason why this should not be allowed. It is no purpose of the law to protect the individual from being ruined by perfectly lawful agreements he has been making in full awareness of their consequences. If such interpretation of trade association agreements had not been made before, it was simply because the agreements in kind represent a new departure in trade organisation. The decision, given in 1937, affirmed what Sir John Macdonnell had held some twenty years before when he declared that "so far as economic policy is concerned, the Courts understand 'public policy' as tantamount to freedom of trade", adding that "this limitation seems unreasonable" and "unsatisfactory in many respects".[3] This "unreasonableness" was now removed, but at the same time the House of Lords had implicitly (though not in so many words) asserted that the monopoly-complex in the phrase "restraint of trade" was now definitely removed and that Lord Haldane's view of the relative advantages and disad-

[1] Cf. H. L. Law Reports, 1937, pp. 797 sqq.
[2] Cf. Law Reports, loc. cit., pp. 814–15.
[3] Cf. Report on Trusts, 1919, p. 33.

vantages of competition and monopoly (or quasi-monopoly) had been definitely accepted.

This, of course, is fundamental. If monopoly or quasi-monopoly is regarded as pernicious in itself, it should be illegal to enact or enforce rules designed to bind members of a trade association to uphold such monopoly. Under such circumstances, to put a member's name on the stop-list might indeed be a wrongful act. Once the view is taken, however, that quasi-monopolist trade associations, though "restraining" trade, are not condemned as pursuing unlawful ends, or ends conflicting with the public interest, it is evident that no action can arise out of their trade practices. This already emerges from an earlier case in which it was declared that "the mere intention to raise prices" by a combine was not "proving an intention to injure the public", and that "to prove an intention to injure the public by raising prices the intention to charge excessive or unreasonable prices must be apparent".[1]

Here lies the crux of the situation. If quasi-monopoly were in principle regarded as being against the public interest, the doctrine of common law on restraint of trade might have been easily extended to trade associations and their agreements. If quasi-monopoly were not so regarded and if, as Sir John Macdonnell expressed it, the "economic effect of contracts and combinations" were to be "examined by Courts as they would be by trained economists"—by scrutinising, if such is possible, the "reasonableness" or "excessiveness" of prices—then the whole edifice of "restraint of trade" must necessarily be shaken. The first attitude is aptly illustrated by an American case, in which an association tried to persuade manufacturers to refrain from accepting orders direct from chain stores. The association brought forward a number of "economic" arguments; it stated, for instance, that the practice of the chain stores in question was detrimental to retailers of a general kind and therefore of no advantage to the consumer. The Court nevertheless refused to sanction an action which was designed "to deter a manufacturer or producer from shipping his merchandise to an acceptable customer".[2] In this legal decision, the "monopoly"—or "restraint of trade"—factor was decisive. If this case had been treated on "economic" lines, however, an entirely different line of judgment might have been taken. British Courts have wisely avoided such a line, fearing that it would lead them nowhere.

[1] Quoted by Kirsh-Shapiro, pp. 332–3.
[2] Cf. Kirsh-Shapiro, pp. 205–6.

The indefinite character of the findings of the Report on Restraint of Trade as regards such economic effects should always be a warning, though no modern economist would reproach a Committee for being cautious in expressing a definite opinion whether certain price levels were " reasonable or not ", certain " distance-limits " justifiable or not, or which traders were to be regarded as " efficient " or not. Such judgments are always founded on subjective standards of opinion which are liable to the sharpest controversy and are objectively disputable.[1]

In recommending no change in the " law "—meaning no new legislation interfering with trade associations—the last words of the Committee were that

> if at some future time, the question of public policy in relation to the wider problem of monopolistic combinations and trusts should be examined, the possible support being given by the price maintenance system of trade associations and their boycotting agreements to such monopolistic combinations ought not to be overlooked.[2]

In other countries, definite legislation as relating to cartels and trusts has had a very definite effect upon the legal position of retail trade associations and their agreements. The statement made at the end of the Report, cautiously phrased, was an inconsistency. A few lines before the Committee had stated that it did not come to the conclusion that " if a change in the law were made there is any reason to think that the interests of the public would be better served ". The Committee must have known by its own investigations that industrial combination in many of the most important examples had actually stimulated and supported the formation of trade associations and had used them as a welcome tool to reinforce their own policy of price-maintenance. If indeed the " problem of monopolistic combinations and trusts " was outside the scope of the Committee—a reservation which it should never have accepted—it is hardly conceivable that it should have uttered so complacent a view about the effects of trade associations without scrutinising the fairness of the price policy as followed by " industrial " combines, with which such retail trade organisations were usually firmly associated, both in loyalty and by agreement.

[1] Cf. Hermann Levy, *Nationaloekonomie und Wirklichkeit*, Leipzig, 1931.
[2] Cf. Report on Restraint of Trade, p. 32.

CHAPTER 18

LEGISLATION ABROAD

> In the absence of a purpose to monopolise or the compulsion that results from contract or agreement, the individual certainly may exercise great freedom; but concerted action through combination presents a wholly different problem.
>
> MR. JUSTICE MCREYNOLDS, of the Supreme Court, in U.S. *v.* American Linseed Oil Co. (1923).

IT is a surprising feature of the present-day structure of British industrial organisation that the country which once prided herself on being immune from any monopolist domination to-day not only possesses hardly a single industry or trade in which quasi-monopolist combination is absent, but actually has remained the only important industrial country in which no legislation has been enacted to control their activities. Indeed, the only possibility of counteracting the formation of monopolist associations—the application of the doctrine of restraint of trade—has been almost eclipsed. Britain appears to be the ideal place for combination, both industrial and in retail trade.

The problem of the quasi-monopolist effects of retail trade associations cannot, as we have seen, be eliminated from that of cartels and trusts. In all countries where legislation has been enacted against industrial combination, such combination mostly involved retail trade associations as well. This being so, it must be borne in mind that any legislation planned in the future to control British retail trade associations must inevitably be part of general legislation dealing with quasi-monopolist industrial combines. Such general legislation always covers retail trade associations as well, so that a brief discussion of the line that it has taken abroad must fall within the scope of our inquiry.

In the United States, the common law doctrine of restraint of trade is no less applicable than it has been in Britain, and its application by British courts has been carefully watched. Kirsh and Shapiro point out that

> British trade association law has not been dictated by the necessity of considering whether the facts of any case constituted a restraint of interstate trade. Nevertheless their application of the law of

conspiracy to cases involving protective action taken by trade groups is of extreme importance since the American law on the subject, in both state and Federal jurisdictions, necessarily must respond to changing times.[1]

It appears that the decision in the Mogul case (1889) came as a surprise to American jurists; referring to this case, Mr. Oliver Wendell Holmes, the eminent judge of the Supreme Court, remarked that "justifications may vary according to the principles of policy on which they are founded",[2] and we have already referred to the change in attitude which took place when combination in industry and trade became the general expression of a new economic trend and a new industrial structure. In the United States, such development was from the start regarded with grave suspicion by economic authorities and unbiased statesmen. The effects of combination, such as those in the oil or meat trades, were perhaps more conspicuous in a country in which all industrial development assumed gigantic dimensions and in which big structural changes could not long remain undetected and undiscussed. In many cases, actual or contended breach of existing inter-State or State legislation, conflicts with traffic regulations, "rebate" matters, and other similar factors perhaps precipitated the invocation of "public interest".

However this may be, investigations were made at the beginning of the century by the Commissioner of Corporations.[3] These investigations constantly kept interest alive, and gave rise to discussion of further legal action. The Sherman Anti-Trust Act of 1890 paved the way for effective interference with unlimited quasi-monopolist activities; it declared that every contract, combination in the form of trust or otherwise, in restraint of trade or commerce among several States or with foreign nations, was to be considered as illegal. It was a measure directed to genuine repression of industrial combination. The Sherman law was supplemented in 1914 by two further enactments. The Clayton Anti-Trust Act of 1914 was intended to render illegal combinations, arrangements or contracts which had the effect of substantially reducing competition or which tended to create monopolies. The Federal Trade Commission Act, a law of wide-reaching importance, created a permanent Commission to investigate and

[1] Cf. Kirsh and Shapiro, loc. cit., p. 228.
[2] Cf. Kirsh-Shapiro, p. 234.
[3] *The Tobacco Industry*, 3 vols., 1905–15; *The Petroleum Industry*, 2 vols., 1907; *The Steel Industry*, 3 vols., 1911–13; *The International Harvester Company*, 1913; *The Lumber Industry*, 1914.

report on the operations and activities of corporations engaged in commerce. In addition to these federal laws there is an enormous mass of single-State legislation, which certainly does not add to the clarity and uniformity of anti-monopolist administration; many of such State laws were based upon an almost dogmatic upholding of the principle of competition as against that of monopoly. The constitution of New Hampshire contains a passage stating that

> the free and fair competition in trade and industry is an inherent and essential right to the people, and should be protected against monopolies and conspiracies in force.[1]

The decisive difference between the modern British and the traditional American attitude in the matter has become increasingly clear to American writers. The latest in the field, Benjamin Kirsh and Professor Shapiro, rightly distinguish between the possible application of the Sherman Act by the Supreme Court in respect of all boycott cases as an " inexorable rule that a concerted refusal to deal is unlawful " and the British law (and that of many of the American State decisions) " by weighing the concerted action in the balance of justification because of defensive or protective necessity ".[2] In dealing with retail trade, a decision affirmed the strict attitude of some American courts. The constitution of a certain group of retailers declared that to be qualified for membership a firm should be regularly engaged in the particular business and should stock sufficient merchandise to meet the reasonable demand of the public in his community. This rule was certainly not dissimilar to some tests of commercial qualification which we have enumerated in discussing British trade associations. By publishing the names of the so-called " irregular dealers " (i.e. those not conforming to the qualifications and requirements of this rule) in a monthly trade journal of the Association which was circulated among members, producers and wholesalers who supplied members, and by articles and editorials, the Association and its members sought to prevent producers and wholesalers from selling the commodity to " irregular " dealers. Boycotting clauses threatened those who infringed the rule. In the legal action which followed, a Circuit Court of Appeals observed:

> There can be little doubt that a combination among retail dealers to prevent competitors from engaging in business, and from procuring commodities essential to the conduct of such business, by means of threats and intimidation, is a violation of the letter and

[1] Cf. Report on Trusts, p. 10.

[2] Cf. loc. cit., p. 234.

spirit of section 5 of the Federal Trade Commission Act, provided inter-State commerce is thereby affected.[1]

This judgment may be compared with the British legal attitude as expressed in Thorne *v.* Motor Trade Association, from which it emerged that it was not the business of the law to protect a trader against the alternative of either accepting the terms of an association or of facing ruin. The difference in attitude lies fundamentally in the fact that the quasi-monopolist aims of trade associations, as the Report on Restraint of Trade expressed it regarding certain trade practices, are considered to be " inherently reasonable ", whilst in the United States in general no " reasonable "—i.e. nationally desirable—economic effects are expected in principle. We may compare in this respect two statements :

British Report on Restraint of Trade (1931) :	*Mr. Justice Stone in the Trenton Potteries Case (U.S.A.) (1927)* :
If the real purpose of the combination is, not to injure another, but to put forward or defend a trade of those who enter it, then no wrong is committed, and no action will lie, although damage to another ensues, provided that the purpose is not effected by illegal means.	Whatever difference of opinion there may be among economists as to the social and economic desirability of an unrestrained competitive system, it cannot be doubted that the Sherman Law and the judicial decisions interpreting it are based upon the assumption that the public interest is best protected from the evils of monopoly and price control by the maintenance of competition.

The contrast is clear. The British interpretation requires only that the association's action should not be purposefully injurious to others—a criterion which is difficult to prove, as the Report on Restraint of Trade itself showed. The American interpretation on the other hand considers quasi-monopoly *per se* as injurious to the community ; it needs no further interpretation than the evidence of quasi-monopoly as such ; it is based upon a less subjective measurement.

It must not be assumed from the underlying theory of the benefits of competition that the effect of U.S.A. legislation has been actually in that direction. Since 1914, a number of fields of activity have been emancipated from the anti-trust policy of maintaining competition.[2] The Webb-Pomerene Act of 1918

[1] Federal Trade Commission *v.* Wallace, quoted in Kirsh, pp. 208–9.
[2] Cf. Burns, loc. cit., pp. 21 sqq.

exempted the export trade from the provisions of the Sherman Act and from some of those of the Clayton Act. The National Industrial Recovery Act of 1933 introduced an entirely new phase of monopoly administration. The Act was declared unconstitutional, but a great deal of importance attached to its principles and "codes". Authorities have expressed the opinion that the Act, far from abolishing quasi-monopoly, did everything to uphold it:

> Promising to restrict the legal prohibitions upon co-operation between firms, the Act encouraged the open and frank discussion of the new business policies . . . the attempt to secure their enforcement by law.[1]

The same view is expressed by Kirsh:

> The Nye Bills, the National Industrial Recovery Act, and the provisions of fair trade and resale price maintenance laws which bind persons who have notice of a contract although themselves not a contracting party, all attempted to restrict lawfully the power of the individual trader to be nonconformist . . . The sanctions of the N.I.R.A., whatever its price as a destroyer of the individual rights of the outside trader, offered a powerful remedy in the hands of trade associations. Legalised penalties supplied the missing link and seemed to provide the key to trade association mystery.[2]

Such views seem somewhat paradoxical, at least in the form in which they are expressed. The background is to be found in the fact that many trade associations had drawn up codes of ethics and conduct, regulating trade practices, and the Federal Trade Commission had been established to prevent "unfair competition"; this body had itself become "interested" in such codes. It first instituted Trade Practice Submittals which later on (1926) were called Trade Practice Conferences. Apparently such an administrative procedure pleased the trade associations, as they were actually regarded as a means of legalising their aims.[3] Some codes evolved contracts for the maintenance of resale prices which had hitherto been held to contravene the anti-trust laws and which were now enforceable with the aid of the government.

The N.I.R.A. only lasted until 1935. Legalised "codes" then disappeared, and what remained were so-called "voluntary codes" which had to comply with the anti-trust laws from which the former had been able to deviate. These "voluntary" codes were controlled by the co-operation between the National Recovery Administration (N.R.A.) and the Federal Trade Commis-

[1] Cf. Burns, loc. cit., p. 462.
[2] Cf. Kirsh, loc. cit., pp. 31–2.
[3] Cf. Burns, p. 70.

sion, through a special Trade Practice Division of the latter. The first of the new codes was obtained by the wholesale tobacco distributing trade in September 1935.[1] The Trade Practice Division accepted, as rules which it was prepared to enforce, prohibitions on "loss leaders" and sales below costs with intent to injure a competitor, "and where the intent may be to lessen competition, or tend to create a monopoly", or "unreasonably to restrain trade". Price discrimination, secret rebates, allowances and services were prohibited under similar conditions. To this must be added the fact that the practice of American courts has certainly done much to keep trade practices under "control". Resale price maintenance attained by contract is unenforceable, though there are certain limitations. Keeping records concerning the behaviour of dealers and employing devices for tracing price-cutting is regarded as a method of price-maintenance contrary to the Federal Trade Commission Act.[2]

On the other hand, it cannot be denied that the Sherman Law has sometimes tended to drive aggressive trade associations underground into secret, surreptitious and illegal practices—bootlegging under the anti-trust laws.[3] Moreover, as Burns emphasises, "corporation law has most directly contributed to the passing of competition, by providing for the transfer of business to small numbers of larger firms". Yet all this should not necessarily signify, as would appear to be the opinion of Kirsh and Burns, that the attempts to create a broad administrative body of control of trade associations was in fact an official admission of monopoly. The N.I.R.A. certainly aimed at some legalisation of monopolies, though it claimed to be directed against them, and this is a very strange contradiction at first sight. But where in spite of repressive laws quasi-monopolist development had rapidly extended, the Administration's intention was probably to protect those who were suffering under it. The law legalised trade rules by allowing their existence in spite of certain legal restrictions, but on the other hand it stipulated a very strict administrative control to make such rules as far as possible equitable to all traders. The position is not unlike that of the "compulsory cartels" type in Germany, which is certainly a 100% monopoly, but also involves State control, thus mitigating the effects of a private imperfect monopoly.[4] "Free competition" by suppressing quasi-mono-

[1] Cf. Burns, p. 520 and *passim*.

[2] Cf. Burns, pp. 430–1.

[3] Cf. Kirsh, p. 31.

[4] Cf. Hermann Levy, *Industrial Germany*, 1935, pp. 153 sqq. for examples: "State control therefore becomes a necessary and most important complement to compulsory cartellisation."

poly had failed, and the only remaining policy was to recognise monopoly but restrict it. This aim was certainly hampered by administrative inefficiency,[1] but it must be conceded that the administrative difficulties encountered in organising on such a scale are very great. There was certainly much confusion:

> . . . government has at times ignored, at times attacked, and at times fostered manipulation under N.R.A. Many codes attacked as chisellers those who still believed that price-cutting was a legitimate means of competition, and the administration found itself enlisted as an active partner in the efforts to manipulate prices and markets while it avowed its abhorrence of monopoly and its championship of free competition,

wrote Milton N. Nelson in 1938.[2] But in the same year Kirsh and Shapiro had stated: [3]

> With the invalidation of the N.R.A. much of the legal authority of associations to police industry and to hold their members in a strict military discipline, departed. The law wisely places definite and drastic limitations on the power or authority; a social duty and responsibility is wisely required of them; their leadership is not final; and their authority is curtailed by the limitations of public policy. In short, the law certainly does not, and should not without an adequate check, permit all legislative, executive and judicial authority of trade associations to be solely in the hands of those deeply interested in their administration.

In spite of the apparent disappointment with much that happened under N.I.R.A., the impression remained that control had become necessary where repression had failed. This, and not the actual working of such control, which must be a matter of experience, is what principally matters. This advance represents the most decisive point of difference with the position in England.

Since the beginning of 1938, the Roosevelt administration has greatly expanded its use of anti-trust powers. The Anti-Trust Division of the Department of Justice has considerably increased its staff, and has taken anti-trust action over a very wide field, including *inter alia* the hire-purchase facilities of motor-car manufacturers, the organisation of milk distribution, and restrictions placed upon certain co-operative schemes related to medical treatment. The objective of the Administration, however, has apparently been to force associations to enter into "consent decrees" with the Administration, by which they modify those policies which the latter regards as anti-social, rather than to attempt to put the clock back by destroying large-scale

[1] Cf. Burns, loc. cit., pp. 575–9. [2] Cf. *Harper's Magazine*, June 1938.
[3] Cf. p. 22, loc. cit. See also below, pp. 220 ff.

enterprise. In contrast with N.R.A., the fundamental point is that the Administration, and not the trade association, decides which practices are " anti-social ". Illustrative of the importance which the New Deal attaches to these aspects of the national economic life was the appointment in 1938 of the Temporary National Economic Committee, a " Select Committee directed to make a full and complete study and investigation with respect to the concentration of economic power in and financial control over production and distribution of goods and services ". The Committee reported to Congress in 1941. Its main function, however, was to lay bare the facts, and the volumes of evidence and monographs submitted will be a most fruitful source of material for the investigator. Had it not been for the necessary concentration of American interest upon the problem of national defence, indeed, one could have expected a new drive towards the discovery of the most effective means of regulation of monopolist tendencies in industry and trade.

In Germany, the classic land of cartels, no " common law " of any kind places obstacles in the way of agreements of a monopolist character. Such tendency is alien to the German law as well as to the German jurisdiction, both so far as the Civil Code (B.G.B.) and so far as the Criminal Code (*Strafgesetz*) are concerned. The principles adopted by German courts in interpreting and applying legislation made *ad hoc* for the regulation of monopolist combines are made more significant. We have already mentioned [1] the very stringent rules which the German Viscose Rayon Sales Bureau made in regard to the resale of its members' products; even independent buyers made themselves liable if they bought rayon which had been formerly acquired in violation of the agreed rules of the association. The *Reichsgericht*, in deciding in favour of this view, has treated the outsider buying association merchandise almost as if he were a receiver of stolen goods.[2] Associations in Germany even went so far as to try to exclude outsiders from becoming members, arguing that the trade was already overstocked, although, at any rate until 1933, they had not succeeded in such attempts. Yet, once the legality of the monopoly and its possible usefulness are admitted, one can logically agree with Professor Robert Liefmann, the German cartel specialist, that it should then also be recognised that a cartel might exercise its power by limiting the number of competitors in the trade group.[3]

[1] Cf. p. 141 above, footnote 3.
[2] Cf. Hermann Levy, *Industrial Germany*, 1935, pp. 149–50.
[3] Cf. Robert Liefmann, *Kartelle, Konzerne und Trusts*, Stuttgart, 1934, 9th edition, *passim*.

The limitations placed upon German cartels, however, cannot be judged by the law alone. Cartels and retail trade associations have long been controlled by specific cartel legislation of an administrative character. It has taken a rather long period to evolve such legislation, and possibly if it had not been for the Great War it would never have emerged at all; but the need for action was always recognised. In the earlier stages, neither the cartel commission which sat from 14 November 1904 to 21 January 1905,[1] nor the numerous suggestions and proposals made in the Reichstag and by such important bodies as the *Deutsche Juristentag* [2] and the *Verein fuer Sozialpolitik* [3] led to anything like a preliminary shaping of a cartel law. In the war, however, the need to create Boards to handle the proper distribution of supplies, and the reliance which such Boards naturally placed upon cartels and dominant concerns, increased the public fear that " states would be created within the State ", responsible to no-one, and stimulated the public determination to enact some decisive cartel control. The disastrous monetary experience of inflation and the constant public fear lest cartels exploit the violent upward moves in prices, necessarily stimulated new demands for cartel legislation. The " Decree against the abuse of Economic Power " (generally called the " *Kartellgesetz* "—cartel law—or the " *Kartellverordnung* "—cartel ordinance—of 3 November 1923) was not solely devised to cope with the immediate dangers of that difficult and anarchic period; but the pressure to enact it arose from the fears of the time. Once enacted, it remained, and it was extended by the decree of July 1933, the importance of which lay in the fact that the creation of compulsory cartels was now placed upon a general basis.[4]

The cartel regulations made under the Nazi regime are of no avail to this investigation. The Nazis' abnormal economic policies are hardly relevant to life under normal and peaceful conditions. Cartel organisation was certainly in conformity with Hitler's economic and political ideas. It pleased the heavy industries, who thought they would get rid of outsiders, although later they perhaps recognised the trap which had been laid for

[1] This in fact was little more than an audience to which representatives of the heavy industries addressed well-prepared memoranda in the form of speeches.

[2] Conference of German lawyers.

[3] The German counterpart of the Economic Section of the British Association.

[4] Cf. Department of Overseas Trade, Report by J. W. F. Thelwall, *Economic Conditions in Germany*, 1934, pp. 86–7; also Hermann Levy, *Industrial Germany*, pp. 139 sqq.; also an interesting account in Prof. W. F. Bruck's able book, *Social and Economic History of Germany, 1888–1938*, Cardiff, 1938, pp. 222 sqq.

them by the totalitarian administration. Again, and at the same time, cartels conformed with Hitler's idea of " protecting the weak ", for many associations fostered this idea. But in actual fact, of course, the real importance of the cartel organisation to the Nazis lay in its ready adaptability to rearmament economics and then to war economy. The cartels were developed as part of the general war-preparation policy. Nazi economic planning is part and parcel of war-making ; it bears little relation to the problems of peace time.

By the time the decree of 1923 began to operate, on the other hand, economic conditions were practically normal. Its principles and rules and experience are of considerable value. A Cartel Court was established, with exclusive and final authority in the matters entrusted to it. It consisted of a judge appointed by the President of the Reich, and four assistant judges. Every cartel or trade association agreement which controlled supplies or prices had to be set out in writing. If such agreement was decided to be detrimental to the public interest, the Minister of Economic Affairs could apply to the Cartel Court to have the agreement declared void, or could issue an order to the effect that any party to the agreement might terminate it. Besides supplies and prices, restriction by boycott and discrimination were included in the scope of operations of the Cartel Court. If an agreement were declared void, the Minister could require all future agreements to be submitted to him for approval.

This law was certainly a turning-point in the German development of cartel legislation. The letter of a statute was not of course necessarily identical with its practical administration. The German Government showed great caution in using its powers. In general it refrained from taking action in the Cartel Court and confined itself to unofficial intervention under section 3 of the Act, which provides that the Minister may in suitable cases take proceedings in the first instance before approved courts of arbitration established in connection with trade organisations. Such courts were established at the Central Associations of Industry, Wholesale and Retail Trade and the Co-operative Societies. The cartel statute was certainly an efficient instrument for guarding the public and the trade, especially in the sphere of price policy, boycotting and exclusive agreements, but it was seldom used as a means of attack against industrial combination as such. The much discussed " Cartel Register " did not appear before Hitler's arrival,[1] and it related only to newly-formed

[1] Cf. Bruck, loc. cit., p. 222.

cartels.[1] Even the Nazi regime tried to draw a distinction between its attitudes towards a corporative organisation of industry and towards cartels. The latter were expected to deal exclusively with the so-called " private " interests of their group (*privatwirtschaftliche Funktionen*), whilst the so-called " groups ", i.e. corporations, were entrusted with tasks of public interest (*gemeinwirtschaftliche Aufgaben*). The cartels were supposed to retain responsibility for the so-called " *Marktordnung* "—the organisation of markets—but there was certainly some muddling in regard to these " functions " in the first period of the regime.[2]

The decree of 1923 did not actually damage the cartels very seriously, and the *Reichsgericht* decisions, which might have been of some guidance to the Cartel Court, did not generally adopt an anti-monopolist attitude. The *Reichsgericht* attitude is best illustrated by the Viscose agreement.[3] The cartel law was certainly inspired by such notions as the protection of traders against " *Organisationszwang* "—compulsory measures to join associations—by which boycotting and exclusive agreements were certainly meant in the first place. Legal phrases seriously weakened the observation of such principles, such as the " stringent reason " which was to be presumed as being necessary for the termination of an agreement in case of oppression. Such reason was defined as being found " if the economic freedom of action of the firm wishing to terminate the agreement is restricted in an unjustifiable manner, especially as regards production, sale or price regulation ". But again the meaning of this paragraph (paragraph 8 of the 1923 Act) gave rise to much discussion. Economists who favoured cartels from organisational reasons regretted that such paragraphs might weaken their existence.[4] Once more the difficulty became apparent, precisely as in the American experiment, that it was impossible to determine exactly what is the public interest in any given case. Such considerations should not obscure the fact, however, that it was found necessary in Germany to draft extensive legislation for the control of cartels and trade associations, and that it was found necessary, long before the advent of the Nazi regime, that the State should assume rights to deal with certain developments of prices as controlled by trade associations and to redress certain limitations upon the right of the individual as far as these were enforced by exclusive agreements

[1] Ordinance of 16 May 1934.

[2] Cf. some very interesting observations in Dr. Fritz Haussmann, *Konzerne und Kartelle in Zeichen der " Wirtschaftslenkung "*, Zurich, 1938, pp. 117–18 and pp. 129 sqq.; also Bruck, loc. cit., p. 223.

[3] See above, p. 141.

[4] Cf. Levy, *Industrial Germany*, p. 148.

and boycotting clauses. Furthermore, in many industries State control had long been exerted.[1] Apart from this active State interference, endeavours were constantly made to clear up these rather difficult problems by intense investigation. In former decades, the voluminous parliamentary inquiries made in full publicity in Britain about all important economic and social matters were the envy of all German economists, who had to content themselves with sparse information, reluctantly given here and there by the German industrialists, but the reports of the *Enqueteausschuss* (Committee of Investigation) dealing with the conditions of production and sale in the leading industries published in 1929 and 1930 offered a wealth of specialised information on cartels and trade associations which made an extraordinary contrast with the meagre information presented at about the same time to the British public by the 37-page Report of the Committee on Restraint of Trade.

The list of countries which have enacted legislation to control the activities of cartels and trade associations is by no means confined to those which, like Germany and the U.S.A., have passed through severe economic convulsions, or have developed a pronounced tendency towards economic centralisation. Switzerland may be quoted as a typical example of a country in which economic conditions have remained remarkably stable in the last 35 years, yet has introduced similar legislative and administrative measures of control.

The Swiss civil law offers important means of interference with "unreasonable" price policy. According to the general principles of the "*Obligationenrecht*", cartels which act against good morals, which indulge in an unjustifiable price policy or which destroy in an unfair way the freedom of trade and industry, may be declared as being without legal foundation. Article 31 of the Federal Constitution provides certain general rules defining the

[1] The State as mine-owner had had an important say in the compulsory syndicate in the potash industry since 1910; in 1919, compulsory regional cartels were established in the coal industry, and the *Reichskohlenverband*, a central selling agency, was formed, upon which the regional cartels and miner- and consumer-members were represented. This body supervised the organisation, sale and consumption of coal as decided by the syndicates; it gave consent to the general conditions of delivery; it fixed and published the prices of fuel having regard to the proposals made by the syndicates and to the interests of the consumers. In addition, a supreme body—the *Reichskohlenrat*, or National Coal Council—was established, which among other duties supervised the agreements between the cartels and the *Reichskohlenverband*. Finally, the supreme control over coal mining and its organisation was vested in the Ministry of Economic Affairs, which could also influence the general price policy of the coal trade.

guarantee of " freedom of trade and industry ", but of late this section of the constitution has been made an object of far-reaching recommendations of reform, in particular as regards a control of industrial and trade combinations. In the Message of the Federal Council (*Bundesrat*) to the Federal Assembly (*Bundesversammlung*) of 10 September 1937 the following characteristic passage is to be found:

> Our entire economic life is permeated to-day by organisations of a private character, which attempt with the means of civil law, to plan economic conditions in their particular sphere. . . . These regulations have become so extended that they even surpass the measure of interference into economic affairs which might be envisaged by the State. . . . To the State, therefore, this means a double task: on the one hand the State must protect the individual against arbitrary action and attacks against his rights by associations; on the other hand the State should assist the associations in the fulfilment of their objects of organisation, as far as the State is able to approve of them. The State should thus provide for such associations as conform to certain conditions the legal basis which is necessary to secure the purposes desired by the majority of the members of such associations.

This is the same tendency as that in the enactments of the United States and Germany. The possible organisational advantages of associations in trade and industry are acknowledged in principle, but only where coupled with the necessary safeguards by State control. Several recommendations as to the amendment and extension of Article 31 of the Federal Constitution, as made by the Committee for Economic Legislation (*Kommission fuer Wirtschaftsgesetzgebung*) and of the National Council (*Nationalrat*) have exhibited this attitude in a more or less pronounced way.[1] We may briefly enumerate some of the latest legislation in other foreign countries exhibiting similar tendencies:

Date of Law	*Country*	*Title of Law*
16.6.1932	Italy	Law relating to the formation and activities of cartels
18.3.1933	Poland	Cartel law
3.8.1934	Jugoslavia	Ordinance about cartels
13.1.1935	Belgium	Law relating to compulsory cartels
9.4.1935	Canada	Economic Council of Canada Act

[1] Cf. for this Dr. Fritz Haussmann, loc. cit., 1938, pp. 218 sqq. and Appendix, pp. 361–2; cf. ib., for the legislation of other foreign countries in the following enumeration, pp. 301 sqq., in which Dr. Haussmann provides an excellent and unique enumeration of legal enactments.

Date of Law	*Country*	*Title of Law*
24.5.1935	Holland	Law relating to the enforcing or non-enforceability of producers' agreements
5.7.1935	Canada	Dominion Trade and Industrial Commission Act
5.7.1935	ib.	Dominion Trade and Industrial Commission Act
3.1.1936	Jugoslavia	Ordinance relating to the Registration of cartels
16.4.1936	Italy	Decree relating to voluntary cartels
15.8.1936	Bulgaria	Law relating to the organisation of industry
8.5.1937	Rumania	Cartel Ordinance

This table demonstrates the strong international tendency by which the State interests itself in the activities of combinations. The trend is universal; Britain remains the only important country outside it.

At the same time, cartel and trade association control by the State has not yet resulted in the development of a uniform pattern of administrative practice. All that can be said is that where the civil or common law of a country does not offer the means of control or limitation of quasi-monopolist activities, new legal measures have been sought to achieve this end, and special legislation has been enacted. This legislation has naturally taken the matter out of the hands of the ordinary courts, or at least in principle has reduced their authority, because it is desirable that anti-monopolist decisions should be reached not only on the basis of strictly legal considerations dealing with the restraint of individual freedom, but also on the basis of considerations of national economic interest and policy upon which judges are not necessarily the most appropriate authority. This step, however, requires that there should be some agreement about the essence and aims of "public interest"; such agreement does not exist nor does it seem likely ever to be defined in an absolute way. The term itself, indeed, is necessarily elastic and ambiguous; it does not mean anything definite except that certain types of actions are by general consensus of opinion regarded as being against the public economic interest. A "corner" which doubles prices, for example, might definitely be regarded as mischievous; but as regards price-fixing generally, opinion might differ widely in times of boom from that in times of depression.

It should not be concluded, however, that State control over combinations has been a failure, where it was enacted. The

need for such control has led to such legislation almost everywhere; only the form of such legislation and the execution of its administration are still defective and immature. The fact that no scientific ruling can be found regarding " public interest " should not cloud the equally important fact that the notion of such interest has been the principle guiding trade association legislation and has been the only possible means of preventing the retail economic system from being dictated by private interests. These might, to use the words of the Message of the Swiss Federal Council, decree regulations which, in the extent of their " interference into economic affairs " might even " surpass " those possibly envisaged by State control of trade associations.[1]

[1] For the failure of anti-monopoly legislation in the U.S.A., two books by an eminent authority, now Assistant Attorney-General with special responsibility for carrying out the anti-trust laws, may be consulted: Thurman W. Arnold, *The Folklore of Capitalism*, 1937, and *The Bottlenecks of Business*, 1940. Cf. also Kirsh and Shapiro, pages 72–4, and other references relating to the Robinson-Patman (Anti-discrimination) Act, 1936. This Act, an amendment to the Clayton Act, penalises price discrimination.

PART VII

PRESENT TRENDS AND THE FUTURE

CHAPTER 19

RETAIL TRADE ASSOCIATIONS AND THE WAR

War never leaves where it found a Nation.
EDMUND BURKE.

THE economic implications of modern warfare favour quasi-monopolist organisations both in industry and in the wholesale and retail trade. Two distinct tendencies have led to this development. In this war as in the last, Great Britain and other belligerents, and even neutrals too, have inexorably been forced to adopt the economics of a beleaguered city. Shortage of supplies and pressure upon man-power resources inevitably force the nation to the greatest possible rationalisation of home production and to the greatest possible economy in consumption. This immediately favours large plants and big producing units. It is to these that the Government looks in the first instance for supplies. Their position in industry becomes enhanced. New industries may spring up; their technical equipment and scale of output will from the beginning favour the large unit.

At the same time, war begets industrial boom, and in such conditions the small manufacturer hopes to increase his profits on a restricted output. This counter-action by the small manufacturer has been very conspicuous in this country between 1939 and 1941. In many industries there are plants which although normally unprofitable to operate—and indeed would in the ordinary way have been gradually superseded—become valuable at a time when every sort of industrial capacity is eagerly exploited; the small re-rollers in the steel industry are a typical example of this.[1] Nevertheless the large numbers of small

[1] Cf. Hermann Levy, *The New Industrial System*, pp. 193 sqq.; at the beginning of the war the position of these works, the function of which is to provide shorter runs particularly on non-standard sizes (which are not an economic product for the larger mills attached to the steel works, owing to

manufacturers felt themselves excluded from the "services" which they proclaimed themselves so eager to render to the nation. Their position was frequently discussed in Parliament, where the Minister of Supply promised [1] to see their interests safeguarded as far as possible within the precincts of the Limitation of Supplies orders and control schemes. At the beginning of 1940 a Federation of Manufacturers and Producers of Great Britain was formed with the special object of promoting the interest of the small manufacturers during and after the war.

The most important event affecting the fate of the small unit, however, was the scheme explained by Mr. Lyttleton, President of the Board of Trade, on 27 March 1941; this scheme aimed directly at a concentration of industry and trade through the closure of less important plants in non-essential industries in order to release man-power for the immediate requirements of the war effort.[2] The Minister was anxious to assert that "these plans were not seeking in the industries affected to found a new order of industrial organisation or a doctrinaire framework. Here was no plan to reduce permanently the number of small firms in an industry and least of all to force the small firms into the arms of the combine." In actual fact the scheme, whatever the intentions of its sponsors, is bound to work in that direction; Mr. Lyttleton promised that there was no intention to found a new "order", but he was entirely unable to give any assurance that the new arrangement would not immensely fortify existing tendencies towards large units in industry and the dominant position of their associations, cartels and trusts. An immediate appeal for the smaller firms was launched a few days later by such economic authorities as Professor A. L. Bowley and A. M. de Neuman, who drew attention to the economic dangers of "industry under contraction" and anxiously pleaded that "a sound policy of concentrating the non-essential industries should not be allowed to degenerate into an attack on the small enterprise".[3]

We are not concerned in this treatise with the problem of industrial combination. But we have been at pains to explain the close link which exists between the retail trade association movement and the development of cartels and trusts in industry,

their need for a continuous run) was much discussed; it appeared that the re-rollers were well employed in view of the growing demand for steel products, cf. *Iron and Steel*, Dec. 1939, p. 94, and *Iron and Coal Trades Review*, 12 Jan. 1940.

[1] Cf. H.C. Debates, 15 March 1940, col. 1558.

[2] Cf. ib., 27 March 1941, cols. 231–2.

[3] Cf. *The Times*, 31 March 1941, p. 5.

which in their turn are based primarily upon the existence of large and concentrative industrial units. It is therefore quite evident that the growing strength of industrial concentration during the war must have strengthened the development of industrial combination. This again represents the machinery by which a great number of the distributive trades are controlled, either directly or through their respective retail trade associations.

In the first eighteen months of the war, there was no tendency towards rationalisation through increased integration of units in the retail trade. There was no tendency to concentrate distribution upon the technically most efficient undertakings, as happened in industry. Some involuntary concentration in retail trade happened here and there, but this was caused by enemy action and not by governmental interference; the President of the Board of Trade promised, when he explained his " nucleus " plans, that the relative share of trade now enjoyed by multiple stores or co-operative societies and the proportion enjoyed by the small retailer should not be disturbed. He claimed on the other hand that the chain stores had already suffered from disabilities from which the small trader did not suffer, and that, therefore, he had also to reject the suggestion that trade ought to be diverted from the big chain stores into the hands of the small retailer.[1] In this respect there was apparently a marked contrast between concentrative tendencies in industry and the reverse in retail trade, the latter not being rationalised on technical grounds for war exigencies.

Both industry and retail trade, however, were similarly affected by the second major tendency which favours quasi-monopolist development in war time—the needs of public administration. It was the experience of the Great War that the measures taken by the Government to regulate supplies and control their distribution immediately encouraged the formation of trade associations. The Report on Trusts of 1919 observed[2]:

> There was considerable evidence before us that the growth and power of these Associations has been greatly strengthened during the period of the war, and that this result has come about primarily from the novel circumstances of the war, under which Government, acting through the Ministry of Munitions or other Departments, found it necessary sometimes to consult the most informed opinion of the trade, and sometimes to ration material through an organisation representative of the trade. Unassociated firms which found themselves not consulted by the Government were thus led to join

[1] Cf. Debates, 27 March 1941, col. 741. [2] Cf. loc. cit., p. 4.

> existing Associations, or in some cases to form representative groups for the purpose of advising the Government on matters concerning trade.

This is exactly what happened again when the present war broke out. The number of regulations affecting the retail trade rose steadily as the war went on, culminating in stringent rationing in many trades; restrictions were imposed [1] severely curtailing the sales of many consumer goods.

These regulations involved many difficult and complicated problems for retailers, with which the individual shopkeeper could hardly cope. Complaints, or even inquiries, could not easily be conducted by individual firms, whilst an association could do so with vigour and experience by approaching the appropriate departments. It was no longer at all difficult for trade associations to satisfy the individual trader that it was in his urgent interest to join. The association seemed the obvious machinery to ventilate complaints and organise collective policy on problems which were urgently vital to every single tradesman.

> Regarding the question of supplies, individual firms may be relieved of a great deal of "spade work" as the various Controllers of Government Departments will appreciate being able to deal with the industry as a whole through the medium of the association.

It was in such terms that the necessity of joining the association was propagated for manufacturing as well as distributing firms.[2] In such matters as the competition of canteens with retail traders, an association could be made the propelling instrument to effect restrictions on the former [3] by approaching the Minister in charge. When the hairdressing trade found itself hit by the limitation of supplies of cosmetics and other requisites of the trade, an organisation was urged to action by a member who declared that "all trade organisations ought to bombard the Board of Trade with protests".[4] The individual retailer had neither the means nor the authority to put up such a barrage.

Again, the small trader could hardly be expected to be as fully conversant as an association with the art of making correct applications. Discussing applications to be made to the Central Price Regulation Committee "to have the wholesale buying price, the retail buying price and the retail selling price of any

[1] Limitation of Supplies (Miscellaneous) Orders. See Note on p. 237.

[2] Cf. *The Leather World*, 20 Feb. 1941.

[3] Cf., for instance, as regards the action of tobacconists' associations in this matter, *Confectionery News*, 6 Dec. 1940, p. 11.

[4] Cf. *Hair Dresser and Beauty Trade*, 3 Jan. 1941, p. 2.

particular type of 'branded' goods in which the applicant may be interested fixed by order to be made under the Act", for example, an electrical trade journal pointed out that

> while the form of application is clearly designed for the single applicant, it is understood that the Central Committee is prepared to accept, through appropriate trade organisations, a joint application which may be made by a number of manufacturers in respect of articles of a similar character.[1]

When dislocation of trade by bombing became acute, it was through trade organisations that the Board of Trade made arrangements for adjusting supplies in those reception areas in which population was bound to increase.[2]

When in Spring 1941 the "nucleus" schemes became a necessity once more, the work of trade associations leapt into the foreground. No formal principle was adopted that trade associations should be the representative agencies for the drafting of concentration schemes; but in the cardboard box-making and wallpaper manufacturing branches of the paper-using industries, firms were referred officially to their trade associations, with which the Board of Trade on its part was to get into touch.[3] The outward "importance" of trade associations has certainly been greatly enhanced during the war, especially where they are housed and staffed by the Chamber of Commerce. Many such trade associations are almost exclusively engaged on work directly arising from war-time restrictions and requirements and in co-operation with various Government Departments.[4] If a chamber of commerce provides office accommodation and secretarial assistance to affiliated, allied and other trade associations it may indeed happen that many of the smaller members of a trade are no longer able to distinguish between the private character of such associations and the chamber which they may regard as a semi-official body, with which relationship should be cultivated.[5]

In such circumstances the membership of trade associations

[1] Cf. *Electrical Trading and Radio Marketing*, June 1940.

[2] Cf. *Textile Weekly*, 27 Dec. 1940: "It is desired to extend those arrangements from textiles to include the necessary goods controlled by Limitation Orders, and trade associations able to co-operate should communicate with the Industrial Supplies (Registers) Department, Board of Trade, Carlton Hotel, Bournemouth."

[3] *The Times*, 17 April 1941.

[4] Cf. 58th Annual Report of the Council of the London Chamber of Commerce, 1941, pp. 11 and 13.

[5] See above, p. 52.

has increased considerably. At a meeting of the Liverpool and District Sweet Retailers' Association, the President of the Association declared : [1]

> Their association had been in being for many years and had discussed many forms of control, distance-limit, price control, the control of club-trading and the licensing of shops. What they had schemed for over these many years the war had brought about in a few months.

He added significantly that " the chief concern was to retain " after the war the sort of control which the war administration appeared to bring along—registration of shops. Trade papers constantly report the progress made by the association movement even under conditions which hitherto had been believed to be adverse to organisation.[2] Likewise in the petrol retailing trade, according to the *Petroleum Times* of December 1939,

> it is satisfactory to learn that, when apparently every other inducement has failed over many years, war has supplied the necessary impetus to many lubricating and distributing firms throughout Britain to join their trade associations. Since September 3rd something like 100 new members have joined the National Lubricating and Grease Federation.

Secretaries and other representative members of trade associations have begun to declare in unmistakable language that every " decent " trader was expected to join " his " association. When the complaint was raised that old-established scrap merchants' tenders for large supplies to certain works had been refused unless they joined the National Federation of Iron and Steel Scrap Merchants, for which an entrance fee of 100 guineas was asked, the secretary of the Association replied : " Every self-respecting member of a trading community joins his trade association as a matter of course." There were firms which remained outside and yet expected to enjoy all the benefits the association was offering.[3] Again, when in connection with E.P.T. dis-

[1] Cf. *Confectionery Journal*, 6 March 1940, p. 8.

[2] Cf. *Electrical Trading*, Jan. 1940, p. 27 : " No section of the electrical industry is more open to abuse in trading methods than the manufacturing and distribution of lighting fittings. Yet, oddly enough, it is in that section that the best work of organisation has lately taken place." The D.E.R.A. (Domestic Electrical Refrigerator Association) was formed in March 1940. A " White List " scheme in the radio business was attempted (cf. ib., Jan. 1940, p. 48). See above, p. 48.

[3] Cf. *The Machinery Market*, 5 Jan. 1940, p. 20 ; cf. also ib., 12 Jan. 1940, p. 18.

crepancies a writer of a letter to an electrical trade journal asked for an explanation why " Association " manufacturers in the lamp trade " find it necessary to have two distinct rates of retail discount " and why the trade policy of the association in question allowed a discount of 22% to a free retailer and then increased the discount to 27% to the retailer who was prepared to confine the whole of his sales to one group of manufacturers—the journal observed that it had to add

> only one comment—that standardisation of trading policy is one of the prerequisites to properly ordered trading and the industry naturally looks to the principal association, E.L.M.A., for leadership.[1]

Another journal urged its readers that

> the only practical way open to smaller firms to bring their influence to bear on matters affecting their business is through membership of a trade organisation. In other words, it is useless staying outside and grousing that the federation does nothing.[2]

" Trading community ", " leadership ", " self-respecting " traders—the trade associations have taken many phrases out of the vocabulary of those who aim at corporate organisation of industry and trade. They may not be aware how dangerously near they come to a system which in the political sphere their members—and in particular their strongest members—would fight to the death as being completely alien to traditional British commercial philosophy and conviction.

It is not merely by administrative exigencies that wartime legislation has strengthened the position of retail trade associations. Much of the legislation itself, apart from the administrative obligations it involves, tends to undermine the position of the small independent retailer, to strengthen the position of his bigger antagonist and to drive the former into the arms of the association. There can be no doubt that many regulations suit the chain store better than the small retailer. The initial system of allocation of food supplies, for example, did not take account of the very considerable changes in the distribution of the population which had followed the outbreak of the war. It was consequently advantageous to the large retail chain firm which could switch supplies from place to place as demand varied, and correspondingly disadvantageous to the small shopkeeper who in reception areas could not get extra supplies to meet the increased

[1] Cf. *Electrical Trading and Radio Marketing*, Dec. 1940, p. 30.
[2] Cf. *Petroleum Times*, 30 Dec. 1939.

demand.[1] The smaller interests in the grocery trade complained bitterly that before the introduction of rationing the Government had not taken steps to classify distributors according to their economic differences. Some retailers, so it was argued, were able to purchase on more favourable terms than others; butter and cheese were instances of this. "Is it fair," so it was asked, "to the small private retail grocer that a large concern should be able to purchase a commodity controlled by the Ministry of Food at a lower price than his smaller competitor?"[2] We have repeatedly stressed how very important the existence of large and dominant firms may be for the creation and domination of trade associations. In cases such as that just mentioned, the process was obviously though not intentionally assisted by legislation.

Another example of the way in which legislation favoured the position of certain quasi-monopolist combines to the detriment of retailers is afforded by the development of the meat trade. At the outbreak of war the Government took over 700 out of 17,000 slaughterhouses. The Ministry of Food had originally intended to select 600, but this figure was raised to 700 as a result of protests by Members of Parliament. Experience showed that this number was inadequate, and by the summer of 1940, 831 slaughterhouses had been selected on the merits of equipment and accessibility. Commenting on the Government's meat policy David Ginsburg observes [3] that centralised slaughtering had certainly its tremendous sanitary advantages, but that "the treatment of the small man" in war was "needlessly harsh". Mr. Ernest Bevin said in correspondence with the Parliamentary Labour Party's Food Committee on 9 January 1940 that "it appears that the smaller people are going to be left out entirely". Mr. Ginsburg explains that, though the Government have been right in selecting large units of supply, they

> have given preference in the Ministry to wholesalers, and more particularly to importing syndicates [4] whose chain stores have been allowed to handle the home-produced meat they once ignored. . . . While not denying the advantages of transport rationalisation, it

[1] Cf. the excellent description of the matter in Charles Smith's *Food in War Time*, Fabian Society, 1940, pp. 13 and 14.

[2] The *Grocers' Gazette*, 5 April 1941.

[3] Cf. *Fabian Quarterly*, Winter 1940, pp. 26 sqq.

[4] In 1938 some 70% of the supply of imported meat came from Argentina; and the trade was practically controlled by six large companies; cf. Charles Smith, loc. cit., pp. 7–8; also this book, pp. 34–5, for quasi-monopolist organisation of the meat trade.

seems as if the Ministry, by making the Wholesale Meat Transport Association its sole agent, has given powers to force all retailers into affiliation.

Similar developments were apparent in the cigarette and tobacco trade. It was reported that appeals were made by the National Union of Retail Tobacconists to certain wholesalers who control shops to " play fair " with the trade as a whole, and not to favour their own shops in the matter of supplies. Individual retailers were complaining that they have to go short while the " tied shops " were getting as much or nearly as much tobacco as they wanted. There was at times a strong feeling that " this question is one of the causes of the tobacco and cigarette muddle that the Tobacco Controller is having especially investigated ".[1] Attention was called at a meeting of retail trade associations of tobacconists to the fact that the large tobacco manufacturers held a surprisingly large amount of leaf, and that the small manufacturers would in time have to depend on the quantity allowed to them ; if the war continued for any considerable time the trade would tend to be largely in the hands of combines.[2]

Apart from these particular governmental and administrative conditions which favoured retail trade association progress during the war, general economic conditions developed all along the line which we have described as being the frank aim of retail trade associations. We have seen that the greatest concern of the associations—even of those most firmly constituted—is the " undercutter ", the shop which sells branded articles below the fixed price and thus undermines the association's policy of price-maintenance. Undercutting, of course, must rely upon ample general supplies of goods ; it is in the last resort the outcome of over-supply (and therefore liberal margins) which seeks some outlet outside the prescribed channel.

But as the war progressed, supplies became increasingly scarce. The volume of retail trade in the year ended January 1941 was appreciably smaller than that of the preceding year. A purchase tax of $33\frac{1}{3}\%$ on the wholesale prices of luxury goods and of $16\frac{2}{3}\%$ on personal and household goods which need more frequent replacement was introduced in October 1940, although, as it did not apply to articles already in stock, it did not imme-

[1] Cf. *Evening Standard*, 21 Dec. 1940.

[2] Cf. *Tobacco*, 1 Feb. 1940, p. 86. Similarly the *Cigar and Tobacco World*, April 1940, p. 245, reported that the formation of a so-called " Triple Board " —consisting of tobacconists, newsagents and confectioners' associations—was urged as a means of counterbalancing the strength of " combines " in all these groups, and representing these trades on the Tobacco Control Board.

diately become fully effective. The fall in the volume of sales was offset by the rise in prices,[1] but this change, though alleviating the losses of the retail trade, in no way offset the growing scarcity of supplies and the difficulty of procuring the necessary stock to keep many retail outlets going. The undercutting shops, which under normal conditions had had difficulties in obtaining a constant stream of merchandise, felt the strain first.

One of the less predictable by-effects of the war, wrote a pharmaceutical trade journal early in 1941,

> has been a substantial reduction in the activities of the price-cutters —a fact to which reference was made at a recent meeting of the Proprietary Articles Trade Association. The cause has not been solely or even mainly the rain of bombs that falls on the unjust as indiscriminately as on the just. A number of price-cutting traders are known to have been put out of action in this way, but the production quota for manufacturers of toilet preparations has been the potent factor.

The journal remarked with satisfaction that more retailers had joined the association, and that the position for the association traders was most satisfactory except that bombing favoured the traffic in stolen goods. The P.A.T.A. was thus obliged to continue its vigilance in price-maintenance; this was essential "if the livelihood of chemists is to be safeguarded".[2]

The policy of governmental price-fixing during the war does not of course run counter to the trade associations' principle of price-maintenance. The official prices fixed, however, are *maxima*, and although the marked prices of branded goods are in general maxima as well as minima, retail trade associations in war time are not much concerned with the "maximum" aspect of price-maintenance. It has even been stated sometimes that retail trade associations are prepared to relax the maximum price for branded goods where circumstances of particular scarcity justify such a course. At the same time, there have been frequent complaints that the fixing of maximum prices entailed hardship to the trade when it was based upon conditions at an earlier date, such as when at the beginning of the year 1941 various goods were price-regulated according to the conditions which

[1] Cf. for details, *The Economist*, 15 March 1941, p. 29, of Commercial History of 1940.

[2] Cf. *Chemist and Druggist*, 1 Feb. 1941, p. 67; similarly *British Pharmacist*, Aug. 1940, p. 321, reported under the heading "Price-maintenance Work" that "the quarterly report of the Association's price-maintenance work stated that during the past quarter the price-cutting position throughout the country has shown further improvement".

had existed on 2 December 1940. The grocery trade protested against what was called " the growing tendency to create standstill maximum price orders which are in effect back-dated ".[1]

In principle, trade associations would have been more satisfied if the Government had resorted to a system of minimum price-fixing instead, for such a course would quite naturally have been a support to their policy of preventing price-cutting. At a meeting of the London and Metropolitan Association of the Grocery, Provision and Allied Trades it was stated that " while the association has not felt in the past that any useful purpose would be served in making representations to the Ministry [of Food] to prescribe 'fixed' prices rather than maximum prices ", it was noted with interest that one local Food Control Committee was asking the Ministry to fix a standard price for all foods for which Christmas prices had been announced.[2] In connection with complaints about special cases of price-cutting, a member of an association said

> there was no hope of getting a fixed minimum price for controlled goods. The attitude of the authorities appeared to be that if some traders were prepared to sell certain articles below the fixed maximum price, why should the public not have the benefit of it ? [3]

This was in fact the Government's attitude; the authorities abstained from supporting by a decree of minimum prices the aims pursued by retail trade associations for so long in their fight against outsiders and interlopers. An interesting case occurred in which a Scottish co-operative society sold milk below the price which had been determined by the Scottish Milk Marketing Board for December 1940 with the approval of the Ministry of Food; there was much complaint and comment by the private trade, which apparently regarded the co-operative society as a " cutter ". The general manager of the co-operative society, however, explained that he regarded the price of milk as determined by the authority as merely a maximum price

[1] The Council of the London and Metropolitan Grocers' Association, cf. *Grocers' Gazette*, 18 Jan. 1941 ; cf. also *Food*, Feb. 1941 ; cf. also the following passage of the Chairman's speech at the 1941 annual meeting of Lewis Ltd. : " It might not be fully appreciated in government circles how the operation of the Price of Goods Act had removed the recognised landmarks by which efficient retail distributors were guided in their management. They entirely concurred with the principle of checking undue rise in retail prices, but the method adopted by the Act to give effect to that principle deprived the retailer of the yard-stick with which, week by week, he had previously been able to measure and control his trading results as his financial year progressed."

[2] Cf. *Grocery*, March 1940, p. 69.

[3] Cf. *The Grocers' Gazette*, 30 March 1940, p. 400.

and in no way as a minimum price; it was not in the interest of his society to raise the price to the maximum; the society could only lose turnover by such a rise; on the other hand, they were tied down, like other distributors, to a certain quantity of milk, and could not increase their sales, so that they would not take any trade from other people. But, added the general manager, "home produced articles should be sold as cheaply as possible" and

> we hold that it is the duty of the Ministry of Food to prove all things before taking action. We are not satisfied that the costing of production such as is taking place has been adequately carried out so far as the production of milk is concerned. We have suggested to our own trade association that they should press for the exact costing of production. We object to producers' boards being allowed to fix producer prices without adequate guarantees to the consumer.[1]

The dangers which would have been involved in an application of minimum prices could not be better illustrated.

This hope of government help does not only apply to prices; it also applies to the problem of margins. In the electric lamp trade there was some dissatisfaction because under the working of the purchase tax the retail price of certain similar lamps did not work out quite uniformly; it was pointed out that the reason was the difference in trade discounts, and that

> knowing this the Customs should have insisted that lamp manufacturers came to a general agreement between themselves on basic discounts as a preliminary to any agreement on the purchase tax.

Manufacturers were urged to come to an agreement and make a fresh approach to the Customs:—

> We shall never get anywhere while the present system of individual action persists.[2]

This illustrates very clearly the use of Governmental regulations as a means of bringing pressure on the trade to combine for common action—in this particular case for the standardisation of margins.[3]

[1] Cf. *The Milk Industry*, Feb. 1941, p. 55.

[2] Cf. *Electrical Trading and Radio Marketing*, Dec. 1940, p. 30, and Nov. 1940.

[3] How "standardisation" of certain discounts or rebates might lead to an unnecessary increase of costs was mentioned in the Sixth Report of the Select Committee on National Expenditure, 27 Feb. 1941, p. 49, in a discussion of conditions in the meat transport trade: "The option exercised by Retailers' Buying Committees in certain areas to do their own transport from the wholesale depot to their shops in return for which they receive a rebate of $\frac{1}{8}$th penny per lb. on the meat transported has been found to operate a little too generously in favour of retailers."

In the field of "ordinary" retail distribution, the number of outlets certainly decreased as the war went on, and the prospects of more competition by new shops certainly became much more restricted.[1] Nevertheless, retail trade associations were by no means satisfied with the competitive outlook. One of the constant worries of the retail trade has been club-trading and similar irregular channels of distribution. The war necessitated a great increase in such channels in the form of canteens, coffee stalls and similar partly mobile retail outlets. These met with the strongest opposition of retail trade associations, which considered them as interlopers and resented any of their privileges for extra supplies. The officially recognised canteen organisation for the Forces is the N.A.A.F.I. (Navy, Army and Air Force Institutes), but there are some 5,000 stationary and 700 mobile canteens run by voluntary bodies; the Salvation Army alone has 300 canteens in Britain. These new channels are regarded as an undue encroachment on the "Lebensraum" of the normal trader, and a danger to his interests in war time in particular. There were heavy protests. Complaints were made by trade associations about the increased trade in cigarettes by the licensed trades and clubs.[2] In the confectionery trade at a meeting of a trade association it was pointed out[3]

> that the trader having to make a living, to pay rent and rates and keep out of debt, was gradually sacrificed to innumerable institutions [i.e. canteens] which were springing up all over the country.

A resolution was passed calling for action by the Confectionery Trade Council and the National Union of Retail Tobacconists to curtail the increasing number of canteens in connection with the auxiliary services, while "regular" traders were suffering from insufficiency of stocks. A deputation was appointed to wait on the local M.P. and "other influential personages"; an "earnest appeal" was addressed to Lord Woolton, the Minister of Food, by the Merseyside Sweets and Chocolate Industry Joint Advisory Board for the removal of the priority given to the service of industrial canteens in the matter of supplies. "Unless stocks are diverted from industrial, religious and semi-

[1] Since January 1941 a new regulation concerning the manufacture of toilet preparations handicapped the position of retailers making such preparation. Those who had started such business after July 1940 had to apply for registration and were prohibited from even beginning to supply the goods made until application for registration had been made to the Board of Trade; cf. *Retail Chemist*, March 1941, p. 26.

[2] Cf. *Tobacco World*, Dec. 1940, p. 661.

[3] Cf. *Confectionery News*, 6 Dec. 1940, p. 11, "Shopkeepers and Canteens".

religious canteens," it was claimed, "the vast army" of 6,000 to 7,000 wholesalers and 230,000 sweet retailers in Great Britain "will be compelled to close their business within the next two or three months." It was suggested that Lord Woolton should issue instructions to the manufacturers of this industry to divert their whole output first to the armed forces and second to the wholesale section of the industry, for distribution to "legitimate sweet retailers". Not even satisfied with this proposal, an association in Northern Ireland demanded that direct supplies of certain sweets to hospitals and the defence services should be entirely stopped. This anti-canteen campaign, however, met with strong opposition, and trade papers were anxious to stress the point that a distinction should be made between "legitimate" functions of canteens (e.g. communal feeding) and functions which are an encroachment "on the domain of the shopkeeper".[1]

The campaign was not unsuccessful. Early in 1941, the War Office reviewed the position of all existing canteens catering for the needs of the troops, and those which were found redundant were cut off from supplies by the Ministry of Food. The War Office also issued instructions limiting the hours during which canteens—both war service and philanthropic—were permitted to sell foodstuffs. The Air Ministry followed the same course.[2] *The Economist* rightly observed in this connection that "it is a question of supply, not of trade rights" and that the "real reason for the restrictions" was to prevent waste of food, mainly in the form of "snacks for soldiers", which was unjustifiable if it was brought about by diversion of food from strained civilian areas.[3] But nevertheless retail trade associations may have regarded these canteen restrictions as a success for their propaganda. The anxiety of organised trade to watch with vigilance and to oppose any attempt to curtail its "legitimate" domain of business was seen when the Council of the Pharmaceutical Society protested against certain parts of the scheme for the supply of medicines to unaccompanied evacuated children:

> They regret with extreme misgivings the precedent which has been created in this case whereby the general scheme is for the supply of medicines to be undertaken by medical practitioners and the supply by pharmacists is made the exception.[4]

Protests were made to the Minister of Health, who gave the

[1] Cf. *Grocers' Gazette*, 8 March 1941.
[2] Cf. for some details, *Evening News*, 10 March 1941.
[3] Cf. *The Economist*, 22 March 1941, p. 375.
[4] Cf. *The Retail Chemist*, Jan. 1940, p. 38.

assurance that this was only an " emergency arrangement " and that he would try to remedy the matter through " local emergency medical committees " representing the doctors and the chemists, whereby medicine needed by children would be supplied by the chemists on prescriptions issued by the doctors. This conflict of interests is by no means unfamiliar; even urgent wartime emergency conditions were not able to put a stop to the jealousy of chemists towards the dispensing doctors. Similarly, it is hardly admirable that at a meeting of a retail trade association " protests were made to the B.B.C. in reference to proposed talks on the wireless on the subject of co-operative societies ".[1] Even with fewer shops, poor prospects for newcomers, a diminishing influence of price-cutters and a general strengthening of association power, retail trade associations' endeavours to limit the zone of competition continued unabated.

This growth of power inspired retail trade associations even more than before to look ahead to their final aims of planning a non-competitive organisation of retail distribution. A very elaborate scheme, for instance, " for the control and distribution of cigarettes " was discussed in Summer 1940 at a meeting of the London branch of the National Union of Retail Tobacconists. A census of retailers was suggested, measures of restriction on new shops proposed on distance-limit lines, and action was postponed only because " it was too early to go into more than a bare examination of the scheme ".[2] The predominance of manufacturers over retailers in the tobacco trade was once more disclosed; retailers complained about the low margins granted, saying that manufacturers " treated the retailers as if they were of no value at all "; [3] opposition to the combined action of manufacturers stifled the desire to work out a full-fashioned plan of non-competitive organisation. In the bakery and confectionery trade, the aim of registration was constantly stimulated by the worries about irregular competition,[4] such as trade by public houses after the closing hours of shops, club trading, price-cutting, etc. A remedy, so it was suggested,

> might be found in registration and licensing, but it would have to embrace all trades and not be at all like the registration now operating under war conditions for food traders, where, if traders in the first place stocked a sufficient number of commodities, they receive a licence for the lot.

[1] Cf *Tobacco World*, Dec. 1940. [2] Cf., ib. Aug. 1940.
[3] Cf. meeting of the Liverpool section of the Northern Tobacco Trade Association, in *Tobacco World*, June 1940.
[4] Cf. *Baker and Confectioner*, 27 Dec. 1940.

In the food trade the "desirability" of organising the whole retail trade on the registration and licensing plan was pointed out even before the war. In a letter to *The Times*,[1] Mr. Dan Tobey, Chairman, Canned Food Trades Standing Joint Committee, stated that in the early days of 1939 and well before the commencement of the war, the Canned Foods Standing Joint Committee pressed very strongly upon the Food (Defence Plans) Department—the predecessor of the Ministry of Food—the "vital necessity of licensing all traders in canned goods—manufacturers, importers, brokers, wholesalers, or retailers". The argument was that otherwise speculation would be rampant. There is no doubt that the latter was the case as the war progressed, though it remains questionable whether registration and licensing need have been regarded as the only or even the most effective way of keeping prices in a reasonable relation to costs.[2]

In the hairdressing trade, schemes for regulating the supplies between wholesalers and retailers were set on foot, and prominent representatives expressed the view that the Government ought to license shops and restrict the opening of new ones.[3] In grocery trade journals, the question of a restriction of shops by Governmental interference was constantly discussed;[4] it was even hoped that

> after the war we shall not have another rush of people who know nothing about the grocery business, to run shops, otherwise the limitation of shops question will again arise in a much more serious form.

The desire to retain in perpetuity the conditions restricting the number of shops which had developed in war time was expressed whenever occasion arose. The assumption that in any post-war boom there would be an unhealthy increase of retail outlets was aptly used to support the demand for immediate precautions by registration, distance-limit and qualification tests.

[1] Cf. 24 May 1941.

[2] Cf. also *Evening Standard*, 22 May 1941, where in relation to the same matter "licensing plus the requisitioning of all stocks held by any but legitimate traders of long standing" was urged by the same quarter "as the only possible solution of the problem". Cf. for further suggestions to restrict new entrants *Games and Toys*, May 1941, p. 29; in the meat trade suggestions were made to restrict definitely the sphere of distribution of the so-called "dual purpose butchers", so as to prevent general butchers from selling pork and other meat simultaneously; cf. *Meat Trades Journal*, 5 June 1941, p. 157.

[3] Cf. *Hair Dresser and Beauty Trade*, 27 Sept. 1940; a driving force was the Hairdressers Wholesalers Association, founded in 1926.

[4] Cf. for instance, two letters in the *Grocers' Gazette* of 1 March 1941, on "Registration" and "Limitation of Shops".

Fear of a coming over-supply of retail outlets with the well-known accusations against incompetent, adventurous, speculative retailers was again the main argument for seeking State assistance. This argument has apparently not fallen on deaf ears in Government circles. In the debate on concentration of production in the House of Commons on March 27, Captain Lyttleton, President of the Board of Trade, envisaged the reappearance of " mushroom " concerns in a possible post-war boom. He expected the continuance of control after the war, and warned that " mushroom concerns . . . spoil the industry for the other people in it, and then go out of business when the damage has been done ". He observed that the change-over from war to peace would have to be a very gradual one.[1] Such views must be welcomed by retail trade associations which for years have been proclaiming their " ideal " of stopping " unhealthy " competition—and in particular such competitors as ventured to interfere with their aims of price-maintenance. Neither these associations nor Captain Lyttleton has clearly explained how " mushroom " concerns can be distinguished from " non-mushroom " concerns. It almost seems as if the trade associations' aim that profit levels should be secured by restrictive action has, even in the minds of administrators, won ascendancy over the possibility of unrestricted competition between the efficient and the less efficient trader. Wherever in modern days monopolist organisations have defended their aims on grounds of public interest they have put forward the argument that " cut-throat " competition was a social evil and that it was the object of combines to combat it. It is only natural that the argument is now used with great vigour to check the possible future tendencies towards a revival of that retail trade competition which, in the view of associations and association-minded traders, war conditions have so happily restricted.

[1] Cf. H.C. Debates, 27 March 1941, col. 744.

NOTE (*to page 224 above*)

When this book was fully printed the Retail Trade Committee of the Board of Trade (see Bibliography below) published its Second Interim Report. (The first Interim Report had dealt with restrictions on the opening of new shops.) The Report, while not dealing with retail trade associations, gives a very detailed indication as to the impact of the general conditions of war and the special legislation (Limitation of Supplies Orders, Consumer Rationing Scheme of June, 1941, etc.) on the retail trade in goods other than food (some 300,000 shops). It may be seen from the Report how drastic was the reduction in numbers of retail outlets, and thereby of their competition. In Glasgow, for instance, a sample test suggests that about 25% of small non-food shops had closed during the first two years of war.

CHAPTER 20

THE CASE FOR STATE CONTROL

Evidently . . . as feudalism, which with its ideas and habits of subordination was for many centuries silently behind the British Constitution, dies out, and we are left with nothing but our system of checks, and our notion of its being the great right and happiness of an Englishman to do as far as possible what he likes, we are in danger of drifting towards anarchy. We have no notion, so familiar on the Continent and to antiquity, of *the State*—the nation in its collective and corporate character, entrusted with stringent powers for the general advantage, and controlling individual wills in the name of an interest wider than that of individuals. . . . But how to organise this authority or to what hands to entrust the wielding of it?

MATTHEW ARNOLD, *Culture and Anarchy*, 1869, Ch. II.

THE rapid development of retail trade associations with the definite aim of restricting competition is not due to any sudden awakening of a spirit of combination among traders. It coincides with certain fundamental changes in the structure of production, with the tendency towards greater concentration and standardisation of retail trade. A growing tendency towards mass production, resulting from the growing opportunities and facilities for concentrated mass distribution, had been the main stimulus to industrial combination, assisted in many instances by such restrictive measures and conditions as tariffs, patents and the existence of monopolisable raw materials. In industry the movement generally began at the bottom of the productive process, where standardisation and concentration had their first opportunities, as in mining and the manufacture of heavy products [1]; it slowly proceeded to the more advanced stages of more elaborate manufacture. There seemed to be little possibility of its extension to the distribution of most products, for these, after having reached their last stages of production, were dispersed into innumerable and diffused selling channels, with sometimes hundreds of thousands of vendors. Where retail distribution began, a barrier seemed to erect itself against further combination on account of

[1] The author has described a typical example of the development of industrial combination from the raw material stage to the highly finished product—the iron and steel industry of the U.S.A.; cf. Hermann Levy, *Die Stahlindustrie der Vereinigten Staaten von Amerika*, Berlin, 1905.

the multiplicity of selling units with their diversified competitive interests and conditions.

This position no longer exists. The notion persists that "logically" it should still exist. The President of the Board of Trade, Captain Oliver Lyttleton, explaining to the House of Commons the objects of the concentration scheme, declared that

> It is in the field of consumer goods industries where you find multitudinous types and a great variety of designs; in the hosiery industry alone there are 1500 firms. That structure is dictated by the nature of the problem. Here is the least favourable field in which monopolies could arise.[1]

Captain Lyttleton confessed that a great distinction had to be made between the manufacturing quasi-monopolies and the retail trade, that in view of the "turnover of a million retailers" the Government would not be in a position "to exercise the same control over the retail trade as they are proposing to apply to the manufacturing trades". But he did not mention the retail trade associations; he did not refer to their powerful means of restricting free competition. Yet the fact that these organisations exist destroys the argument that in view of the multiplicity of firms no Government control is possible; such combinations are no less compact and integrated than the big industrial combines. Nor is the Minister's declaration that the retail trade problem "is a much more regional one than it is in the case of the manufacturing industries" borne out by this investigation. On the contrary, most of the important retail trades—tobacco, motor, pharmaceutical, grocery and electrical trades—have their important national or territorial retail trade organisations, while the constant aim of many others is to build up and strengthen their associations on a national scale.

Far from being handicapped by the great number of members, retail trade associations have evolved powerful machinery of non-competitive organisation. They enforce price-maintenance policy by trade practices of various kinds, they draw up rigid programmes to limit further access to the trade; in qualification tests, in registration and licensing, in fixing distance-limits, the policy of retail trade associations seems even to go farther than the measures envisaged by trusts and industrial combines.

Combination in the retail trade is to a very large extent the immediate result of industrial concentration and of the attempts of dominant manufacturers to complete their quasi-monopoly con-

[1] Cf. House of Commons Debates, 27 March 1941, col. 742.

trol of the distribution of their products. This aim could never have been realised, however, if the whole structure of distribution had not lent itself increasingly to mass consumption, with as much standardisation as possible. The growing urbanisation during the last thirty years, the disappearance of small artisanship, the greater standardisation of household economy and the development of new articles of consumption which from the beginning were offered in a few types only (as electric lamps or radio sets) were all tendencies which strongly favoured increasing standardisation of consumers' goods. This tendency found its expression in the creation of the branded article, the chain and department store, and a progressive concentration, on individual or co-operative lines, of distributive outlets. The same tendency was the breeding ground for retail trade associations. In the United States, where these tendencies of integration and unification of consumption were most conspicuous, and where the branded article and the chain store became prominent earlier than in any European country, the development of retail trade associations has been more advanced and "successful" than in any other country.

The retail trade association movement appears very largely as an annexe to that of industrial combination. In many cases it may well be said that had there been no concentration in industry the retail trade association would never have come into existence. For this reason, again, no sharp dividing line should be drawn as Captain Lyttleton drew one. Retail trade associations are partly the direct offspring of industrial combines, but partly the result of the tendency for large retailers to affiliate themselves with manufacturers, in order to make the best possible profit. At the same time, the connections between the pre-existing industrial combines and retail trade associations are not exclusively responsible for the existence and power of the latter. There are also associations in retail trades the essence of which consists in some service to customers—such as caterers, hairdressers, shoe repairers or undertakers—and in which, as in the baking trade, a product bought is not simply resold to the customer, but processed by the retailer. In general, however, the tendency towards the formation of big associative groups designed to maintain prices or margins and to restrict competition will either emanate from the distributing units directly, or be fostered and supported by manufacturing (and sometimes wholesale trade) interests. These tendencies frequently merge into one another. The provider of services becomes a vendor of manufactured articles—the cycle

repairer sells new machines, the small baker sells sweets. In such cases, the small retailer may well become merged in retail trade association, although part of his occupation would not seem at first sight to be suited to such combination.

To denounce the retail trade association movement as an artificial or "unnatural" development which *per se* should be condemned is hardly justified. It has grown up as an organisational movement in almost all trades just as cartels and trusts have developed in industry, and it would be senseless and futile to attempt to check this movement. Even if the law against restraint of trade still provided a means of State interference it is doubtful whether a retail trade association is in fact in all its functions exclusively devoted to the aim of forming a monopoly. As Professor Macgregor so aptly says,[1] "A 'higher organisation' in an industry looks the same outside as a monopolist construction." Retail trade associations may even exercise those functions which are designed to reduce competition in a way which is not open to attack as being monopolist pure and simple. Reduction of competition by more rational associative organisation—for example, the elimination of the less efficient—need not be in theory identical with an aim of raising profits unduly by monopolist methods.

But however this may be, it is hardly relevant to the attitude which the State should be expected to adopt in this matter. As retail trade associations become increasingly comprehensive, artificially stimulated by wartime need, these organisations tend to develop into States within the State. This position is enhanced when retail trade associations work in close contact with important industrial combinations; it is further enhanced when several groups of trade associations act in concert and press their claims by common representation. Retail trade associations do not generally comprise even almost all members of a trade, and sometimes not even their majority, but they are increasingly regarded as the representatives of their trade—a very undemocratic position indeed. The London Chamber of Commerce adduces the affiliation of many trade associations as proof of "the authority with which the Chamber is able to speak".[2] It has not been disclosed how far the numbers of unassociated traders are "represented". All this means a constant strengthening of the position and the influence of associations.

There can be no doubt that the functions and policy of retail trade associations, in conjunction with industrial associations or

[1] Cf. D. H. Macgregor, *Enterprise, Purpose and Profit*, Oxford, 1934.
[2] Report of the Chamber is cited above, p. 13.

dominant concerns, go far beyond this or that particular matter of trade interest. Their goal is far more comprehensive. *It aims at a change of the entire structure of the retail trade by the institution of a comprehensive and strict system of rules relating to the entrance into the trade and the specific duties of every member of the trade in his professional behaviour; it sets out prices, or margins; it bases the right to exercise a trade on rigid qualification tests; it limits shops; and it imposes almost destructive fines where the rules are not obeyed. Indeed, the modern retail trade association in its "ideal type" is in no-respect different from the corporations of the past. The question for the State arises whether it is desirable to see this power develop unrestricted, uncontrolled and unlimited.*

Should this question be answered in the negative, the attention of the State must be directed to two distinct problems. The first is the influence which retail trade associations may exercise—and already exercise in many cases—on the competitive structure of the trade. The second is more specific; it applies to the actual effects of trade associations' policy and actions upon the machinery of distribution; it is mainly that of price policy. The two problems are closely interlocked; the non-competitive organisation of the retail trade is the basis of its price policy.

In considering the first group of problems, the State must decide what advantages or disadvantages may be expected from a limitation of retail outlets. Retail trade associations in general take the view that there are too many shops in their respective trade groups. Their aim is to "protect" the existing shops, not only against "interlopers" but also against a tide of prospective newcomers. This does not mean that retail trade associations are the protectors of the small retail trade units. Associations with quasi-monopolist aims always have two distinct possibilities as regards the number of their members. They may consist of a great number of more or less equal competitors and may aim at the protection of all their members against "self-ruining" competition; in that case the association will show little development, for its object will be the constant support of the rank and file, and its policy will be more reactionary than progressive. On the other hand, in retail trade associations in which big concerns—mainly in those with strong links to industrial combination—play a dominant part, it is to be expected that further concentration will evolve out of, and within, retail trade association. The formation of the latter will then be of benefit not to the large number of its small members, but to the nucleus of big undertakings.

There is no clear line, therefore, for the State to follow. The claim of retail trade associations that their aim is to prevent the "over-production" of shops and the incursion of unreliable entrants of all sorts finds support in many influential quarters. The aim is supported, for example, to some extent by the representatives of the shop assistants, who advocate the registration of all existing shops in order to safeguard the welfare of the distributive workers; they claim to speak in the interest of some two million wage earners. "What we do know is that the unregulated opening of shops is wasteful and expensive, and works untold wrong to hundreds and thousands of employed persons," states a trade union representative.[1] If here the ambition of retail trade associations for the closed list, registration and licensing, coincides with that of the retail trade workers, the ring around the new guild organisation would be as tight as it was in the days of a common platform of masters, journeymen and apprentices.

Again, the fear of an influx of what are called "mushroom" businesses in a possible post-war boom has already been explained by the President of the Board of Trade.[2] Admittedly the development of "mushrooms" may result from conditions very different from those of a trade boom, such as misguiding advertisements of so-called "gold mines", which are for sale to would-be shopkeepers, or to the payment of lump sums for compensation to people who then become shopkeepers without any experience. The State, if it wants to check undue competition of this sort, should not leave these possibilities out of consideration.

It would be very dangerous if retail trade associations were left to decide which should be considered efficient and which inefficient units. There is no possible yard-stick, certainly not until standardised cost accounting practice has found its way into retail trade organisation. Such practice, though recommended as early as 1919 by the Report on Trusts and widely accepted in the United States, has made so little headway that a Report of the Select Committee on National Expenditure had to state in 1941 its definite dissatisfaction with existing conditions and the almost complete lack of scientific cost accounting.[3] If such are the conditions in big industries with large units, how can the large number of units in the distributive trades be expected to set up

[1] Cf. Henry Smith, loc. cit., p. 148, and his very interesting discussion of Mr. Hoffman's pamphlet, *Shops and the State*.
[2] Cf. H.C. Debates, 27 March 1941, col. 744.
[3] Cf. Third Report of the Select Committee on National Expenditure, 1941, p. 10, and Fourth Report, 1941, pp. 14–15, 17–18 and *passim*.

comprehensive and detailed standards of cost accounting by which their relative costs could be sufficiently measured? The department stores have done something in this direction.[1] But even if enough data did exist to show the costs at which efficient and less efficient retail trade units operate their businesses, such information might not be used for the support of the most efficient unit. On the contrary, as the American example shows, such figures may be used in support of the less efficient units and form the minimum price asked for by an association to protect its members. The State would then, in deciding the propriety of fixed prices, have to decide whether it wanted to maintain the less efficient units by granting such prices or margin levels, and by so doing increase unduly the profits of the most efficient. If the State did this, it would be supporting the reactionary guild-principle; if it did not, it would be taking the grave responsibility of becoming the judge of very complicated and perhaps indeterminate matters.

Certainly there is no good case for eliminating the small shopkeeper and replacing him by the more "efficient" large stores; we can fully endorse the observation of the Report on Restraint of Trade, that if many small shopkeepers disappear "it does not follow that those would be the least efficient or the least useful".[2] They may be the victims of some "dumping", here called price-cutting, by the big units merely on account of the financial preponderance of the latter. But at the same time, many small shopkeepers, which a retail trade association claims to protect in order to save "independent" tradesmen, have long ago forfeited their independence. Recent studies by Charles Madge and others have again revealed the fact that many small shopkeepers correspond quite closely to the better-paid working class.[3] Once an "independent" retailer wrote:

> The truth is that, as things are to-day there is probably no type of retail trader who is less independent than myself, and the group of which I am a member.[4]

He, in particular, referred to his dependence upon the sale of

[1] Cf. Nineteenth Annual Report of the Retail Distributors' Association, 1938, p. 7; there are Annual Reports on department store operating costs which were started in 1932; the authors of these Reports, Professor Plant and Mr. R. F. Fowler of the London School of Economics, have done some important pioneer work in this field.

[2] Cf. Report on Restraint of Trade, p. 25.

[3] Cf. *Economic Journal*, Dec. 1940, p. 442.

[4] Cf. Henry Smith, loc. cit., p. 78.

price-fixed branded goods. The sentimental argument in support of the small retailer, brought forward by the retail trade associations, as if he were a small " yeoman " of his trade is not altogether justified.

Taking all this into consideration, it is highly doubtful whether it will ever be possible to state which retail traders are " redundant ", and it is certain that such decision should not be left to retail trade associations. It is reasonable to assert, indeed, that the State has a particular interest in conserving a great multiplicity and diversity of retail channels. It is usually overlooked that a great diversification and specialisation of national production in the finished stages of commodities is one of the fundamental conditions of a great export capacity. The home market is in almost every case the basis upon which exports must be built. As the American example shows, standardisation of home production impedes a real export drive in finished or highly specialised articles. In spite of its tremendous natural resources, the United States has not been able to build up that export business in finished goods which was the aim of her national policy and her tariffs. Under existing labour conditions in the U.S.A., such commodities could only be produced by highly standardised methods, so that no such choice of commodities could be offered to the world's markets as was possible under quite different conditions of taste and specialisation in European industrial countries. American exports of finished products therefore remained restricted mainly to such standardised goods as motor cars, agricultural machinery, and typewriters. The American boot and shoe industry, for example, has been unable to oust European competition from third markets. The diversity and specialisation of European production depends largely upon the specialisation of European home markets, which, on its part, depends upon the specialisation of taste and consumers' demand. This demand is generally better served by the relatively smaller shop exhibiting a great variety of goods, fitted to " all tastes " than by the fixed-price store with a relatively small choice of wares for sale. Standardisation of taste means standardisation of production into relatively few patterns ; this, in its turn, is a real disadvantage if the diversified demand of export markets is to be satisfied. Japan has solved the problem through her immense resources of cheap labour, which enables her manufacturers to retain individuality in spite of mass production. If in Britain the great flexibility of the home demand were lost, export capacity would immediately suffer. Such flexibility largely depends upon the diversity and multiplicity of individual

competing shops which represent the necessary outlet for such differentiation of taste.[1]

From this viewpoint the State should certainly be interested in maintaining a multiplicity of retail outlets. This cannot be done without the existence of competition in the retail trade, and this again implies the existence of more efficient and less efficient units. The State is confronted with a dilemma when it is asked to agree to measures restricting the number of retailers, which would undoubtedly lead eventually to a further concentration and standardisation of the large units. A great number of retailers in every branch of trade necessarily involves a great deal of cut-throat competition, of bankruptcy and economic disappointment; on the other hand, such process of competition maintains the ground on which alone a great multiplicity of retail outlets may be kept or even expanded. The survival of the fittest conserves the prosperity of the progressive and efficient section of traders, although at some sacrifice. To protect the rank-and-file in a guild-like manner, on the other hand, might in the long run not even save the least efficient; it would lead to his absorption and to still greater concentration within the trade group. However, the policy of price-maintenance as exercised by important retail trade associations in collaboration with industrial combines may well have the effect of stimulating competition. The existence of a large army of " price-cutters " in pre-war times is an ample proof of such a tendency. It has been the experience of almost every strong combination in industry, and it will certainly be the same in the retail trade, although in industry, where such " interlopers " are sometimes represented by one or a few new large concerns, the effect of high prices as a stimulant to outside competition is certainly much more conspicuous than in the distributive trade, where the same tendency may result in an increase of a great many of the very smallest types of competitors. Where this development manifests itself, it is perfectly right to argue, as Henry Smith does, that " the large number of shops is not a cause, but an effect, of the imperfection of the retail market ".[2]

The position of the State in this matter may be potentially this: no administration will be able to decide effectively and with satisfactory fairness about the greater or less efficiency of individual retail outlets. Nor can such a decision be expected from bodies, like retail trade associations, the interest of which may either be

[1] Cf. for a more detailed treatment of this matter, Hermann Levy, " The Value of Variety ", in *Store*, May 1939.
[2] Cf. Henry Smith, loc. cit., 150.

influenced by dominant members as against the weaker members in the rank and file, or else by considerations of protection of the least efficient in the trade. The State may on the one hand think it inadvisable to interfere directly with the development of retail trade associations, i.e. to enact anything which would mean " compulsory competition ". The State will do well at the same time to avoid anything which by legislation of any kind would tend to fortify the position of these bodies and make them " compulsory cartels ". If the development towards large associative bodies in the retail trade is justified by modern economic conditions, these bodies will develop and flourish by their own vitality. The State should manifestly refrain from completing what perhaps retail trade associations are unable to achieve—the legalisation through registration, and licensing, and exclusive qualification tests of monopolist aspirations. If in a trade the association decides upon qualification tests, and if the members are willing to adopt them, the State should be careful to see that such rules do not develop into statutory exclusiveness. The same applies to distance-limits and other matters. The State may not wish to obstruct the development of retail trade associations, even to the point of not interfering with boycotting clauses and similar arrangements, but it must certainly do everything it can to keep the way open to new competitors and to avoid measures which would further restrict their living-space. If the aim of retail trade associations is to restrict the access to trade, the State should not enact any measures which would support or accelerate this tendency.

The State must also decide about the other major aspect of the problem—that of the actual price policy of trade associations. Here again the problem arises whether the State can in fact decide whether certain price-levels are justified. The problem of " the fair price " is particularly intractable. We pointed out earlier how difficulties arose in recent American attempts to tackle the problem by legislation. Here in Britain we are even more hampered by the lack of reliable cost data. But even if the necessary data did exist, this would not itself decide whether a given price should be regarded as unjustified, especially if the preservation of weaker units of the trade is the association's aim. It will never be possible to decide whether a relatively " high " and maintained price is justifiable in the public interest when we know that without it numbers of retailers would disappear—a result which might be regarded as being to the disadvantage of the public.

In very flagrant cases, such as price pools, the State may easily

come to the conclusion that a monopoly has been at work. But such cases are rare in modern times and with modern publicity. When confronted by less definite price increases, the State will not often be able to decide whether the rise was actually due to an "unjustified" action of a combination. This fact does not make it any less desirable that the State should be in a position, if only as a palliative and prophylactic safeguard, to be constantly informed about price regulations and to exert a certain supervision. As the Report on Trusts in 1919 very aptly pointed out: [1]

> The immediate effect of price associations has avowedly been to "improve" prices. Whether in the long run the prices so raised have remained above a "reasonable" level is a question that cannot be answered. There is no standard of "reasonableness". Moreover, figures afford little guidance as to how far prices were raised as a result of association, for the reason that the price of labour and materials and the condition of the markets is constantly changing. If materials are going down and improved plant is introduced, it does not suffice for an association to say, "We have not raised the price". The question is whether, as a result of combination, prices were higher *than they would otherwise have been.*

This indeed is what matters. This being so, the State cannot hope to become a very authoritative arbiter in decisions relating to current price developments, unless it has at its disposal an administrative machinery constantly watching quasi-monopolies in trade and industry, investigating the intricacies of price- and margin-fixing, and having full access to the necessary information.

It should, moreover, be remembered that the quasi-monopolist price policy of retailers' associations may find expression in an attempt to restrict the associative activities of consumers in the field of distribution. It may then not necessarily manifest itself in a definite rise of prices, but in an attempt to prevent an organised reduction, just as, in general, "price-maintenance" and not the raising of prices, which is in most cases much more liable to attack, nowadays plays the leading part in trade association policy. A maintained price may contain just as much quasi-monopolist element as is contained in an agreed rise in prices. It is not the simple "up" and "down" of the price thermometer which gives rise to justified scrutiny by the State.

In Spring 1941 a motor trade paper informed its readers that there were "reports" from more than one quarter that co-operative societies were acquiring filling stations. "Evidently", it was

[1] Cf. Report on Trusts, Prof. John Hilton's Memorandum, p. 24.

observed, " their financial resources enable them to come into the market when a dealer is in difficulties, or presumably if a situation becomes a ' non-continuing ' one in a restricted area." It was urged that such movements should be watched, as " it may be the societies have in mind working on a smaller profit ratio ".[1] When a co-operative society in Scotland found it fit to sell milk below the maximum price, such action, as we have seen, was severely attacked by other trading interests. The general manager, however, explained that the price fixed was not a minimum price, and that it was not in the interest of the co-operative society to diminish their milk sales by increased prices. The view of this courageous manager of a provincial co-operative society should be placed on record. It offers a very practical illustration of the duties which an administrative body entrusted with the supervision of prices as controlled by trade associations should perform, and of the direction in which such a body should look. The *Economist* observed lately: [2]

> The single large monopolistic firm . . . has its dangers; but at least those who are in control cannot evade their social obligations, nor are they prevented from pursuing a dynamic and progressive policy. The greater danger lies in the growing influence of what common law knows (and used to condemn) as " agreements in restraint of trade ", which, without securing whatever technical economies there may be in large-scale production, stifle the progressive elements in an industry, hamstring competition and, under the plea of seeking " protection " and " security ", give stability preference over progress.

We have already pointed out that to-day Britain is the only highly industrialised country in the world where no attempt has yet been made to restrict the domination of quasi-monopolist associations in industry and trade. On the contrary, the principle of " liberty " has been judicially applied to quasi-monopolies and high legal authorities have, not without justification, refused to give judgments which would involve highly specialised economic knowledge and experience. If control is to be exercised over such associations in spite of these objections, it can be instituted only on the ground that any quasi-monopoly, by constituting a dominant power within the economic State, must be subjected to control. Only within such a generalisation can it be hoped to approach the subject in a fair and justified spirit. The State should not be obliged to prescribe given levels of prices. But it should certainly be in a position to form an opinion whether any

[1] Cf. *Motor Commerce*, May 1941. [2] Cf. *Economist*, 5 April 1941, p. 437.

such level is higher as a result of combination than it would be otherwise, and whether in each particular case such quasi-monopolist price-maintenance represents undesirable profits which represent undue exploitation of the public.

For this purpose a Government Department should be established, under the care of a Trade Association Commissioner. This department should exert control over both industrial combinations and retail trade associations. It should be the Commissioners' duty to compile a current file of information about all existing trade associations. This information should contain all the relevant data about the purpose of the association, its membership, its policy as regards prices and trade practices. The Commissioner should be given the fullest possible facilities to obtain such information. A compulsory register of all associations might be instituted. A Report should be presented annually to Parliament upon the nature and development of such organisations. The Commissioner would be entitled to make inquiries, preliminary or otherwise, into any complaints made by any trading individual or group as to actions taken by associations. Entrance fees and fines should be submitted to the approval of the Commissioner. Full publicity should be accorded to any disclosures which, though legally justified, may reveal the exercise of dictatorial powers by associations in restraining individuals in their access to the purchase or the distribution of goods and materials or to the trade in general.

A Tribunal, already recommended by the Report on Trusts in another form, may be envisaged which would be composed of legal authorities, representatives of the trade—which, however, should not be restricted to chambers of commerce and trade associations,[1] but should comprise individual firms and, if possible, groups of firms outside associations, as well as representatives of

[1] The importance of this point has been little understood in general and is even overlooked by such a careful observer as R. W. Baldwin in *Advisory Bodies* (edited by R. V. Vernon and N. Mansbergh, 1940), p. 139. This writer takes pains to explain that the Board of Trade has, if in need of the necessary information, simply to apply " to the interests concerned, represented by the appropriate organisation " under which Mr. Baldwin comprises the Federation of British Industries, the Association of British Chambers of Commerce, " and also the particular trade associations ". On p. 438 Mr. Vernon, the editor of the inquiry, states that " the principal interests in the country are for the most part highly organised into bodies which may claim to be fully representative ", including trade associations in his classification. Our own investigation has shown abundantly that the claim of trade associations, and of retail trade associations in particular, to be " representative " of all interests in their trade is in most cases very questionable, sometimes as regards the number of distributive outlets, sometimes as regards certain types of distributors and their sales.

the co-operative movement and the trade unions. This Tribunal would have[1] the duty of investigating grievances particular to any trade as regards the activities of trade associations, and of reporting and suggesting legislation to redress such grievances as far as the Tribunal is led to the conclusion that such action is necessitated in the national economic interest. The spirit of the department as well as of the Tribunal should be guided in the first instance by considerations of economic and social welfare and not by that of legal dogma. The problem cannot be settled by deciding whether or not associations conform to the interpretation of some legal decision relating to restraint of trade, inasmuch as this interpretation has changed as conditions have changed. If legal authorities have come to the conclusion that the old laws against restraint of trade are no longer applicable to present economic conditions, this does not prove that modern economic conditions do not require their own anti-monopoly legislation. It may well be justified to say that industrial or trade combination, if it leads to quasi-monopoly, need not be regarded as being " immoral " in the legal sense; the moral implication formerly applied to " engrossers " and " monopolists " will not be justified in regard to many big concerns and associations of to-day. But this has nothing whatever to do with the fact that the practical economic effects of such combination may be harmful and may justify government control in some form or other.

It is here that the duties of the new Department will find their justification. In the United States, it has been complained,[2] of late, that anti-trust legislation has been frustrated in its results because too much stress has been laid on the " morals of combinations instead of the effect of their operations ". This should be a warning. It is not the *aim* of retail trade associations which should be primarily the concern of the new Department—these aims can be controlled by denying registration of traders, distance-limit, qualification tests, etc.—but the *actual effect of retail trade association policy on national economic conditions.*

Such a Department would require a staff of well-trained, fully experienced civil servants who would be able to specialise in these highly diverse and complex economic problems. It is here perhaps that the most difficult administrative problem arises. The experience of many Departments during the war has certainly revealed the lack of such officials. In matters such as those related to the control of trade associations it would be fatal to leave

[1] On application by the Commissioner.
[2] Cf. Kirsh. loc. cit., p. 27.

administrative influence to bodies, however representative of important trade interests, which must inevitably be expected to be strongly and legitimately biased in favour of their quasi-monopolist aims. The matter is different from such planning schemes in industry which, as in coal-mining or cotton spinning, aim at reorganisation by the industries themselves in order to reduce redundant plant and increase rationalised organisation. This is a well-defined aim which does not involve a revolutionary change in the structure of the trade. In the case of the modern retail trade " corporations ", which literally plan revolutionary change, the view offered by an " industrialist with wide experience of both public and private enterprise " that " organisation should be built on industrial and not Civil Service lines " would hardly have been acceptable even in war time.[1] In peace time it should appear even less acceptable. Had the recommendation made in 1919 by the Committee on Trusts as regards control of trade associations not been entirely ignored during the last twenty years, a very able and trained staff of civil servants for many industries and trades would have been at the disposal of the Government and of the Ministry of Supply in particular. As things are, the administration of war supplies as well as of all departments which have to deal with the distribution of goods for civil consumption have again been placed between the Scylla of relying upon the biased advice and support of the so-called " representatives " of the trade and the Charybdis of the uninformed authority of civil servants. The *Economist*, which cannot be suspected of favouring regimentation and bureaucracy, wrote in an illuminating Article : [2]

> Perhaps the largest reason for the growth in recent years, with the blessing of the State, of restrictive cartels and associations, is to be found in the unwillingness of the Civil Service to assume any responsibility for the conduct of business, even when that business is operating with the tacit or explicit sanction of the law behind it. The great defect of collectivism . . . is not that the bureaucrats will control industry ; it is that they will *not* control it but cede their duty to the private monopolist.

On this very sensible view was based the claim for the creation of a separate civil service, similar to that in the Diplomatic Service, with special conditions of recruitment and training, not only with a high standard of general intelligence and education, but also with some well-defined knowledge of the business world. We

[1] Cf. *The Times*, 21 May 1941, p. 5.
[2] Cf. *Economist*, 1 March 1941, p. 264.

can fully endorse this suggestion as closely related to any future retail trade association " Department ".

Some people may think that this means more officials, more control, more interference with the so-called freedom of trade. Curiously enough, the average citizen and businessman is far more inclined to observe the existence of bureaucracy and to resent it's interference than to recognise that in a business world in which large sections of the trade are subject to the rules of associations regulating prices and margins, deciding (or at least aiming to decide) about the access to trade or goods, and when such associations take the power to destroy the commercial existence of the individual who disobeys their conventions or does not conform to the tests prescribed, the " economic liberty of the individual " is meaningless. Even those, like Harold Macmillan, who have carefully considered the opportunities of a middle way out of the growing dilemma, have put themselves the question :

> . . . can we find some method of industrial reorganisation which will enable us to abandon laissez-faire, which is " ruinous in one way " without leaving ourselves at the mercy of " private monopoly ", which " is ruinous in another " ? [1]

Wherever private organisations try to assume the rôle of an omnipotent State, a certain measure of State control is indispensable to keep the balance. Such control may in fact turn such organisations as those described and analysed in this book into useful components of the economic structure. The amount and scope of control must not necessarily be the result of abstract principles or foregone conclusions about the advantages or disadvantages of trade associations. On the contrary, administrative control must be made dependent upon the policy which in each case such organisations may choose to take in regard to the public interest. It may well be of a flexible character. But as long as no evidence is given to the contrary, Adam Smith's classic observation will have to be maintained, that " the pretence that corporations are necessary for the better government of the trade, is without foundation ".[2] It is up to the quasi-corporations and would-be-corporations of to-day to demonstrate that this observation no longer holds good, if they wish to prove their usefulness to the State.

[1] Cf. Harold Macmillan, *The Middle Way*, 1938, p. 207.
[2] Cf. Adam Smith, *Wealth of Nations*, Book I, Ch. X.

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The Machinery Market.
Electrical Trading and Radio Marketing.
Confectionery Journal.
Confectionery News.
Tobacco.
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The British Pharmacist.
The Retail Chemist.
The Chemist and Druggist.
The Baker and Confectioner.
The National Association Review (*of Master Bakers, etc.*).
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Hairdresser and Beauty Trade.
Leather Goods.
The Leather World.
Meat Trades Journal.
The Milk Industry.
Games and Toys.
The Perfumeries and Essential Oil Record.
The Shoe and Leather News.
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Petroleum Times.
Motor Commerce.
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Store.
Politica.
Statist.
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The Economic Journal.
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LIST OF RETAIL TRADE ASSOCIATIONS AND RELATED ASSOCIATIONS

(In the order of appearance in the book) [1]

The Retail Distributors' Association.
The London Coal Ring.
Kohlenkontor (Germany).
Börsenverein Deutscher Buchhaendler (Germany).
The Booksellers' Association.
Associated Booksellers of Great Britain and Ireland.
The Publishers' Association of Great Britain and Ireland.
British Publishers' Guild.
Manchester Grocers' Association.
The Birmingham and Midland Counties Grocers' Protection and Benevolent Association.
Traders' Defence Association.
The Federation of Grocers' Associations of the U.K.
Saddlers and Harnessers' Proprietary Articles Association.
Proprietary Articles' Trade Association.
The U.K. Tobacco Dealers' Alliance.
The Coffee Stall Keepers' Protection Association.
The Society of Motor Manufacturers and Traders.
The National Federation of Grocers' and Provision Dealers' Associations.
The Wholesale Grocers' Distributors Association.
The North of England Wholesale Grocers' Association.
Tha National Association of Produce Merchants.
The Grocers' Proprietary Articles Council.
The Retail Fruiterers' and Florists' Association.
The National Federation of Fruit and Potatoes Trades.
The Motor Car Association.
National Federation of Iron, Steel and Scrap Merchants.
Radio Manufacturers Association.
The British Electric and Allied Manufacturing Association.
The Electric Lamp Manufacturers' Association.
The Electric Light Fittings' Association.
The Domestic Electric Refrigerator Association.
The Electric Water Heater Manufacturing Association.
The Electrical Wholesalers Association.
The Electrical Contractors' Association.
National Association of Electrical Dealers.
Ironmongers' Federated Association.
Radio Wholesalers Federation.
National Association of Radio Retailers.
Electrical Contractors' Association.

[1] The list includes associations which no longer exist or have altered their name.

Wireless Retailers' Association.
Radio and Television Dealers' Federation.
The National Association of Electrical Retailers.
The Radio and Television Dealers' Federation.
The White List.
The Motor Trade Association.
British Cycle and Motor Cycle Manufacturers' and Traders' Union.
Cycle Trade Union.
National Association of Cycle and Motor Cycle Traders.
Stationers' Association of Great Britain and Ireland.
The Scottish Tobacco Trade Federation.
Manufacturing Confectioners' Alliance.
National Union of Retail Confectioners.
British Federation of Wholesale Confectioners.
The National Association of Goldsmiths.
The London Jewellers' Association.
The Birmingham Jewellers' and Silversmiths' Association.
The British Clock Manufacturers' Association.
National Council of the Jewellery and Allied Trades' Associations.
The Multiple Shop Federation.
The National Association of Outfitters.
National Association of Credit Drapers.
National Federation of Ironmongers.
National Pharmaceutical Union.
Chemists' Defence Association.
National Federation of Retail Newsagents, Booksellers and Stationers.
National Union of Retail Tobacconists.
Tobacco Trade Association.
Independent Tobacco Trade Association.
National Drug and Toilet Goods Association.
National Cash Grocers' Association.
The National Federation of Off-Licence Holders.
The Hotels and Restaurants Association.
Associated Motion Picture Advertisers (U.S.A.).
Window Display Advertising Association (U.S.A.).
Paper Makers' Advertising Club (U.S.A.).
Agricultural Publishers' Association (U.S.A.).
International Alliance of Bill Posters for the U.S. and Canada.
Theatre Advertising Association (U.S.A.).
American Association of Advertising Agencies (U.S.A.).
Association of National Advertisers (U.S.A.).
National Association of Funeral Directors.
National Federation of Meat Traders' Associations.
National Federation of Fresh Meat Wholesalers.
British Association of Meat Wholesalers.
Sports Retailers' Association.
Federation of Sports Goods Distributors.
Federation of British Manufacturers of Sports and Games Equipment.
The Motor Agents' Association.
Hairdressers' Wholesale Association.
Retail Hairdressers' Federation.
The London and Provincial Wholesale Newsagents' Association.

Liverpool and District Sweet Retailers' Association.
Confectioners', Tobacconists' and Newsagents' Alliance.
Manchester Bakers' Association.
Liverpool and District Wholesale Confectioners' Association.
Midland and Birmingham Tobacconists' Association.
The Periodical Press and Weekly Newspapers Proprietors' Association.
Newspaper Proprietors' Association.
Building Societies' Association.
Chemists' Friends Scheme.
The Coffin Furniture Manufacturers' Association.
Mersey District Funeral Directors' Association.
Birmingham Funeral Directors' Guild.
Potteries and District Funeral Furnishers' Association.
Bournemouth and District Undertakers' Association.
Burnley Funeral Undertakers' Association.
The National Association of Leather and Grindery Merchants.
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